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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.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8162; Airspace Docket No. 17–ANM–12]

Establishment of Class E Airspace, and Amendment of Class E Airspace; St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace designated as an extension to a Class E surface area, establishes Class E en route airspace, and modifies Class E airspace extending upward from 700 feet above the surface at St. George Regional Airport (formerly St. George Municipal Airport), St. George, UT. After a review of the airspace, the FAA found redesign necessary to support new instrument flight rules (IFR) standard instrument approach procedures and en route operations where the Federal airway structure is inadequate, for the safety and management of aircraft operations at the airport. Also, this action updates the airport name from St. George Municipal Airport, to St. George Regional Airport, in the associated Class E airspace areas.

DATES: Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace and modifies Class E airspace at St. George Regional Airport, St. George, UT, to support IFR operations in standard instrument approach procedures at the airport.

History

On April 20, 2017, the FAA published in the **Federal Register** (82 FR 18594) Docket FAA–2016–8162 a notice of proposed rulemaking (NPRM) to establish Class E airspace designated as an extension, establish Class E en route airspace, and modify Class E airspace extending upward from 700 feet above the surface at St. George Regional Airport, St. George, UT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA discovered the references to Class D airspace at St. George, UT, were in error. Those references are removed from the rule. No Class D airspace exists or is proposed at St. George, UT.

Class E airspace designations are published in paragraph 6002, 6004, 6005, and 6006, respectively of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace designated as an extension to a Class E surface area, establishes Class E domestic en route airspace upward from 1,200 feet above the surface, and modifies Class E airspace extending upward from 700 feet above the surface at St. George Regional Airport, St. George, UT. This airspace redesign is necessary for the safety and management of aircraft operations at the airport and to support en route operations where the Federal airway structure is inadequate. Also, this action updates the airport name from St. George Municipal Airport, to St. George Regional Airport, in the associated Class E airspace areas.

Class E airspace designated as an extension to a Class E surface area is established within 1 mile each side of the St. George Regional Airport 030° bearing from the airport 4.5-mile radius to 7.7 miles northeast of the airport, and within 2 miles each side of the airport 203° bearing from the 4.5-mile radius to 8.5 miles southwest of the airport. This controlled airspace supports instrument flight rules (IFR) operations for standard instrument approach aircraft operating below 1,000 feet above the surface.

Class E airspace extending upward from 700 feet above the surface is

reduced to a 4.5-mile radius (from a 8.1-mile radius) of the airport, and within 2.5 miles each side of the airport 203° bearing (from 4 miles each side of the 200° bearing) of the airport extending from the airport 4.5-mile radius (from a 8.1-mile radius) to 13.9 miles southwest (from 20 miles southwest) of the airport, and within 2.2 miles (from 4 miles) each side of the airport 030° bearing extending from the airport 4.5-mile radius (from a 8.1-mile radius) to 21.6 miles northeast (from 25.8 miles) of the airport. The existing 1,200 foot airspace is removed since this would duplicate the en route airspace described below.

Class E en route airspace is established for the safety and management of IFR point-to-point operations outside of the established airway structure, and Air Traffic Control vectoring services.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM UT E2 St. George, UT [Modified]

St. George Regional Airport, UT
(Lat. 37°02′11″ N., long. 113°30′37″ W.)

Within a 4.5-mile radius of St. George Regional Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM UT E4 St. George, UT [New]

St. George Regional Airport, UT
(Lat. 37°02′11″ N., long. 113°30′37″ W.)

That airspace extending upward from the surface within 1 mile each side of the St. George Regional Airport 030° bearing from the airport 4.5-mile radius to 7.7 miles northeast of the airport, and within 2 miles each side of the airport 203° bearing from the airport 4.5-mile radius to 8.5 miles southwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ANM UT E5 St. George, UT [Modified]

St. George Regional Airport, UT
(Lat. 37°02′11″ N., long. 113°30′37″ W.)

That airspace extending upward from 700 feet above the surface within a 4.5-mile radius of the St. George Regional Airport, and within 2.5 miles each side of the airport 203° bearing, extending from the airport 4.5-mile radius to 13.9 miles southwest of the airport, and within 2.2 miles each side of the airport 030° bearing extending from the airport 4.5-mile radius to 21.6 miles northeast of the airport.

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM UT E6 St. George, UT [New]

St. George Regional Airport, UT
(Lat. 37°02′11″ N., long. 113°30′37″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 37°30′00″ N., long. 113°00′00″ W.; to lat. 37°48′00″ N., long. 113°30′00″ W.; to lat. 37°49′25″ N., long. 113°42′01″ W.; to lat. 37°43′00″ N., long. 113°47′00″ W.; to lat. 37°34′30″ N., long. 113°54′00″ W.; to lat. 37°25′32″ N., long. 113°51′22″ W.; to lat. 37°15′00″ N., long. 114°00′00″ W.; to lat. 36°58′00″ N., long. 114°14′03″ W.; to lat. 36°19′00″ N., long. 114°14′03″ W.; to lat. 35°39′00″ N., long. 114°14′03″ W.; to lat. 35°22′40″ N., long. 113°46′10″ W.; to lat. 36°02′00″ N., long. 112°58′00″ W.; to lat. 36°42′00″ N., long. 112°56′00″ W.; to lat. 36°57′00″ N., long. 112°52′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 27, 2017.

Shawn Kozica,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–16282 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0355; Airspace Docket No. 17–AGL–12]

Amendment of Class D and E Airspace; Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending up to 700 feet above the surface at Central Wisconsin Airport, Mosinee, WI, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at the airport. This action is necessary due to the decommissioning of the Mosinee outer marker (OM) and DANCI locator outer marker (LOM) and cancellation of the associated approaches, and enhances the safety and management of IFR operations at the airport. This action also updates the geographic coordinates of the airport and the Wausau VHF Omni-Directional Radio Range and Collocated Tactical Air Navigation (VORTAC). This proposal also updates the geographic coordinates in Class D and Class E surface area airspace, and makes an editorial change in the legal description by replacing Airport/Facility Directory with the term Chart Supplement.

DATES: Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy (prepared by Ron Laster), Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5802.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D airspace, Class E extension area airspace, and Class E airspace extending upward 700 feet above the surface at Central Wisconsin Airport, Mosinee, WI, to support IFR operations at the airport.

History

The FAA published in the **Federal Register** (82 FR 22090, May 12, 2017) Docket No. FAA–2017–0355, a notice of proposed rulemaking (NPRM) to modify Class D airspace and Class E surface area airspace and airspace extending upward from 700 feet above the surface at Central Wisconsin Airport, Mosinee, WI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Central Wisconsin Airport, with a segment 3.3 miles each side of the 350° bearing from the airport extending from the 7-mile radius to 12.3 miles north of the airport.

The segment within 4 miles each side of the Wausau VORTAC 039° radial extending from the 7-mile radius to 10.9 miles northeast of the airport would be removed due to the decommissioning of the Mosinee OM and DANCI LOM and cancellation of the associated approaches. This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport. This action will also update the geographic coordinates of the airport and the Wausau VORTAC.

Additionally, this action replaces the outdated term Airport/Facility Directory with the term Chart Supplement in Class D and Class E surface area airspace, as well as updates the airport coordinates for Central Wisconsin Airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL WI D Mosinee, WI [Amended]

Central Wisconsin Airport, WI
(Lat. 44°46′39″ N., long. 89°40′00″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.5-mile radius of Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AGL WI E2 Mosinee, WI [Amended]

Central Wisconsin Airport, WI
(Lat. 44°46′39″ N., long. 89°40′00″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL WI E5 Mosinee, WI [Amended]

Central Wisconsin Airport, WI
(Lat. 44°46′39″ N., long. 89°40′00″ W.)
Wausau VORTAC
(Lat. 44°50′48″ N., long. 89°35′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Central Wisconsin Airport, and within 3.3 miles each side of the 350° bearing from the airport extending from the 7-mile radius to 12.3 miles north of the airport.

Issued in Fort Worth, Texas on July 27, 2017.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–16284 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AP08

Schedule for Rating Disabilities; Dental and Oral Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the portion of the schedule that addresses dental and oral conditions. The effect of this action is to ensure that the rating schedule uses current medical terminology and to provide detailed and updated criteria for evaluation of dental and oral conditions for disability rating purposes.

DATES: This final rule is effective on September 10, 2017.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, M.D., M.B.A., Medical Officer, Part 4 VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700 (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: VA published a proposed rulemaking in the **Federal Register** at 80 FR 44913 on July 28, 2015, to amend the portion of the VA Schedule of Rating Disabilities (VASRD or rating schedule) dealing with dental and oral conditions. VA provided a 60-day public comment period and interested persons were invited to submit written comments on or before September 28, 2015. VA received 5 comments.

One commenter suggested further defining the description of mandibular and maxillary malunion and maxillary non-union based on the degree of open bite under diagnostic codes 9904 and 9916. However, the severity of mandibular and maxillary displacement and its effect on anterior or posterior open bite depend on an individual's functional anatomy. Therefore, different veterans with the same degree of displacement would present with different degrees of open bite. A qualified dental provider such as a dentist or oral surgeon would appropriately determine the degree of severity in each individual case. Further, rather than basing the severity of open bite on a range of numerical values, it is standard practice for such dental providers to assess the degree of severity as severe, moderate, mild, or not causing open bite.

Additionally, the commenter suggested defining moderate and severe anterior or posterior open bite and mild anterior or posterior open bite. Similarly, due to the variances between individuals' facial anatomy, it would be improper to use exact numerical values to determine the degree of moderate and severe anterior or posterior open bite and mild anterior or posterior open bite. A qualified dental provider would appropriately measure and record these findings. Therefore, VA makes no changes based on these comments.

The same commenter had a question about why only a 20 percent rating is warranted for severe anterior or posterior open bite due to mandibular malunion and a 30 percent rating is warranted for severe anterior or posterior open bite due to maxillary malunion, while moderate anterior or posterior open bite warrants 10 percent ratings for both conditions. These variations in disability compensation are based on the differences in functional impairment due to maxillary and mandibular fractures. Unlike mandibular fracture and its residuals, maxillary fracture presents a more challenging case for repair and rehabilitation. For example, unlike mandibular fractures, maxillary fractures often communicate with sinuses and/or combine with orbital fractures. Such fractures are predisposed to contamination, sinus infection, and obstruction. Even after following treatment guidelines, significant bony resorption may occur leading to cosmetic contour deformity. Further, although such residuals of maxillary fracture raise the potential for pyramiding, such a situation is addressed by the new note (2) to § 4.150, which directs raters to separately evaluate other impairments under the appropriate diagnostic code. Therefore, the functional impairment due to maxillary fracture significantly differs from mandibular fractures. VA took these functional anatomy differences and the resultant differences in functional impairment into consideration during the revision process.

Additionally, the commenter noted that mandibular malunion and maxillary malunion and non-union do not have the same choices of severity of anterior or posterior open bite. Once more, these differences are based on differences in the functional anatomy of maxillas and mandibles and standard clinical assessments by a qualified dental provider. Therefore, VA makes no changes based on these comments.

Multiple commenters asked for additional guidance in assessing interincisal measurements of maximum unassisted vertical opening under diagnostic code 9905. One commenter stated that guidance was needed on how to handle measurements that fall between the specific numbers. Another commenter suggested adding the phrase ''or less'' to the whole numbers listed in the proposed rule or using a range of numbers, such as from 21 to 29 millimeters. VA applied a standard scale for the measurement of interincisal ranges, vertical and lateral, based on the Guidelines to the Evaluation of

Impairment of the Oral and Maxillofacial Region by the American Association of Oral and Maxillofacial Surgeons. Guidelines to the Evaluation of Impairment of the Oral and Maxillofacial Region, American Association of Oral and Maxillofacial Surgeons can be found at *http://www.astmjs.org/impairment.html.* VA agrees that for the sake of clarity, a full range of maximum unassisted vertical opening should be included and makes appropriate edits to diagnostic code 9905.

One commenter stated that VA should address bruxism and its relationship to temporomandibular joint disorder in a note to diagnostic code 9905. Specifically, the commenter stated that VA's treatment of bruxism as only a secondary condition and not a stand alone disability is problematic with regards to claims for dental treatment. The commenter recommended amending 38 CFR 3.381 to clarify the treatment of bruxism in regards to service connection for dental treatment or to add to diagnostic code 9905 the phrase ''with or without bruxism.'' The commenter also recommended rating bruxism as a stand alone issue. However, bruxism is considered a symptom of craniomandibular disorders, of which temporomandibular disorders are a subset; other symptoms of craniomandibular disorders include anxiety, stress, and other mental disorders (Shetty, Shilpa et al., Bruxism: A Literature Review, J Indian Prosthodont Soc. 2010 Sep; 10(3): 141–148., *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3081266/*). Therefore, it is not appropriate to place bruxism as a separate diagnosis or a symptom under diagnostic code 9905. VA has determined that only secondary service connection for treatment purposes is warranted for this condition, both because it is only a secondary condition, not a primary condition, and because its symptoms are already contemplated by the underlying condition for which the veteran is being compensated. Thus, it does not require a separate diagnostic code, and VA makes no changes based on this comment.

One commenter had a question about why diagnostic codes 9901, 9908, 9909, 9913, 9914, and 9915 were missing from the discussion. VA did not propose any changes to these diagnostic codes. According to the **Federal Register** Document Drafting Handbook Rule 1.14, this was noted by inserting asterisks in place of unchanged diagnostic codes. Therefore, VA makes no changes based on this comment.

The same commenter proposed to rate maxillary and mandibular malunion and non-union exactly the same way, regardless of which bone is affected. However, the functional impairment due to mandibular malunion and non-union significantly differs from maxillary malunion and non-union. VA took these differences in functional anatomy and the resultant differences in functional impairment into consideration during the revision process. Therefore, VA makes no changes based on this comment.

One commenter was supportive of the overall changes and additions to this section of the rating schedule. However, the commenter stated that a service-connected noncompensable rating for a dental disability inappropriately restricts the ability of a recently discharged veteran whose eligibility for outpatient dental services is based on 38 CFR 17.161(b) [Class II] to receive appropriate dental services and appliances. To illustrate, the commenter stated that the dental rating schedule provides for a diagnosis of ''loss of teeth, replaceable by prosthesis'' with diagnostic code 9913. Because the schedule considers this to be a noncompenable disability, the veteran is limited to receiving one-time treatment for this condition under 38 CFR 17.161(b). The commenter described why this is not a suitable clinical response for the veteran, especially over the veteran's life-time. Specifically, the commenter stated that the provision of dentures has historically been, and continues to be, VA's treatment response for this condition, even though (1) modern dentistry, as practiced in the community, goes beyond this, offering partial dentures, implants, bridges, crowns, and other prostheses, and (2) the use of dentures may be inappropriate and more harmful to the future dental health of the veteran (*e.g.,* where their use, to address a lost tooth, requires the removal of other healthy teeth to fit them). Moreover, this commenter stated that limiting this veteran to one-time treatment for this condition is outdated and a disservice to the veteran, further noting that, even were these newer treatment options available to this cohort, the one-time limitation would still be unreasonable because these newer options typically require replacement after several years. The commenter believes all of these problems would be remedied by either ensuring that this dental condition (diagnostic code 9913) is changed to reflect a compensable rating for veterans who experience complications of treatment, such as inability to load the prosthesis, diminished vocal projection, chronic pain, or peri-implantitis. In the alternative, this particular dental condition/diagnosis could be excepted from the one-time treatment limitation under § 17.161(b). Lastly, this commenter suggested adding a general note under 38 CFR 4.150 to allow for analogous compensable ratings for any dental disabilities service-connected (or treated as service-connected under 38 U.S.C. 1151) which require ongoing treatment.

Veterans with a service-connected compensable dental condition are eligible for any outpatient dental treatment indicated as reasonably necessary to maintain oral health and masticatory function, with no time limits for making application for treatment and no restrictions as to the number of repeat episodes of treatment under 38 CFR 17.161(a). In addition, other veteran-cohorts are eligible for outpatient dental treatment as specified in § 17.161. Under § 17.161(b) [Class II], a veteran's eligibility for the one-time correction of a service-connected noncompensable dental condition is available to certain veterans who have been recently discharged or released from active service, if specified requirements, including timely filing of the dental application, are met. (No rating action is needed for Class II applicants if the conditions set forth in 38 CFR 17.162 are met).

While we appreciate the arguments raised by the commenter and his advocacy efforts on behalf of the members of his organization, this rulemaking does not seek to revise diagnostic code 9913, as it applies to the loss of teeth, replaceable by prosthesis. As such, these comments go beyond the scope of this rulemaking, which is focused on other codes in the dental rating schedule. Further, a veteran's Class II eligibility for outpatient dental services and applicances is not based on the level of functional impairment for which the Veteran is compensated under 38 CFR part 4. Ratings provided for service-connected conditions under 38 CFR part 4 serve solely to compensate veterans for functional impairment resulting from diseases and injuries and any residuals. In addition, VA has determined that the dental conditions contemplated by § 17.161(b) do not, in general, result in functional impairment. Indeed, VA experts recently carefully considered this very issue as part of an independent undertaking, but they concluded that while such a change would serve a great convenience to affected veterans, no clinical justification exists to change the non-compensable designation given to conditions under diagnostic code 9913, to include loss of teeth, replaceable by

prosthesis. Moreover, the commenter's broader suggested amendments to VA's outpatient treatment dental regulations likewise go beyond the scope of this immediate rulemaking, which again is focused on limited components of the dental rating schedule. Finally, we note that the eligibility criteria set forth in § 17.161(b) are based in law, 38 U.S.C. 1712(a)(1)(B), (b), and so cannot be changed via rulemaking. As a result of all these factors, no changes to VA's outpatient dental regulations are made in response to this commenter's comments related to diagnostic code 9913.

The same commenter was supportive of the overall changes and additions to diagnostic codes 9904 and 9916. However, the commenter was concerned about inter-examiner and inter-rater reliability due to the descriptors of open bite, noting that vague descriptors could result in under-evaluation or pyramiding. As discussed above, due to the variances between individuals' facial anatomy, it would be improper to use exact numerical values to determine the degree of moderate and severe anterior or posterior open bite and mild anterior or posterior open bite. Further, the potential for pyramiding is addressed by the new note (2) to § 4.150, which directs raters to separately evaluate other impairments under the appropriate diagnostic code. Additionally, VA took differences in functional anatomy of maxillas and mandibles into consideration during the revision process. Therefore, VA makes no changes based on this comment.

One commenter urged VA to include periodontal disease as a compensable condition and amend 38 CFR 3.381 accordingly. The commenter stated that periodontal disease has been linked to diabetes as well as other conditions, and veterans who have service-connected diabetes as a result of herbicide exposure are not able to receive dental treatment unless their overall disability rating is 100 percent. The commenter stated that assigning a compensable disability rating for periodontal disease or providing for a compensable rating as a secondary disability associated with service-connected diabetes would alleviate the lack of treatment issue for veterans. As noted previously, the ratings under 38 CFR part 4 serve to compensate for functional impairment. VA has determined that periodontal disease does not result in loss of earning capacity resulting from functional impairment, so no changes have been made to make this condition compensable. Therefore, VA makes no changes based on these comments.

VA is correcting typographical errors under DC 9905 and DC 9916. With respect to DC 9905, in the proposed rulemaking notice, for the 50 percent evaluation, VA referred to mechanically altered food instead of mechanically altered foods. With respect to DC 9916, in the explanatory note for disability rating personnel, VA failed to include the phrase ''following treatment'' between ''maxilla fragments'' and the parenthetical. VA is correcting these errors in this final rule.

VA appreciates the comments submitted in response to the proposed rulemaking notice. Based on the rationale stated in the proposed rulemaking notice and in this document, the final rule is adopted with the changes noted.

Effective Date of Final Rule

Veterans Benefits Administration (VBA) personnel utilize the Veterans Benefit Management System for Rating (VBMS–R) to process disability compensation claims that involve disability evaluations made under the VASRD. In order to ensure that there is no delay in processing veterans' claims, VA must coordinate the effective date of this final rule with corresponding VBMS–R system updates. As such, this final rule will apply effective September 10, 2017, the date VBMS–R system updates related to this final rule will be complete.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits;

64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 21, 2017, for publication.

Dated: July 27, 2017.

Michael Shores,

Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR part 4 as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Amend § 4.150 by:
■ a. Adding Notes 1 and 2 at the beginning of the table;
■ b. Revising the entries for diagnostic codes 9900 and 9902 through 9905;
■ c. Removing the entries for diagnostic codes 9906 and 9907;
■ d. Revising the entry for diagnostic code 9911;
■ e. Removing entry for diagnostic code 9912;
■ f. Revising the entry for diagnostic code 9916; and
■ g. Adding, in numerical order, entries for diagnostic codes 9917 and 9918.

The revisions and additions read as follows:

§ 4.150 Schedule of ratings—dental and oral conditions.

	Rating
Note (1): For VA compensation purposes, diagnostic imaging studies include, but are not limited to, conventional radiography (X-ray), computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), radionuclide bone scanning, or ultrasonography.	
Note (2): Separately evaluate loss of vocal articulation, loss of smell, loss of taste, neurological impairment, respiratory dysfunction, and other impairments under the appropriate diagnostic code and combine under § 4.25 for each separately rated condition.	
9900 Maxilla or mandible, chronic osteomyelitis, osteonecrosis or osteoradionecrosis of:	
Rate as osteomyelitis, chronic under diagnostic code 5000.	
* * * * * * *	
9902 Mandible, loss of, including ramus, unilaterally or bilaterally:	
Loss of one-half or more,	
Involving temporomandibular articulation.	
Not replaceable by prosthesis	70
Replaceable by prosthesis	50
Not involving temporomandibular articulation.	
Not replaceable by prosthesis	40
Replaceable by prosthesis	30
Loss of less than one-half,	
Involving temporomandibular articulation.	
Not replaceable by prosthesis	70
Replaceable by prosthesis	50
Not involving temporomandibular articulation.	
Not replaceable by prosthesis	20
Replaceable by prosthesis	10
9903 Mandible, nonunion of, confirmed by diagnostic imaging studies:	
Severe, with false motion	30
Moderate, without false motion	10
9904 Mandible, malunion of:	
Displacement, causing severe anterior or posterior open bite	20
Displacement, causing moderate anterior or posterior open bite	10
Displacement, not causing anterior or posterior open bite	0
9905 Temporomandibular disorder (TMD):	
Interincisal range:	
0 to 10 millimeters (mm) of maximum unassisted vertical opening.	
With dietary restrictions to all mechanically altered foods	50
Without dietary restrictions to mechanically altered foods	40
11 to 20 mm of maximum unassisted vertical opening.	
With dietary restrictions to all mechanically altered foods	40
Without dietary restrictions to mechanically altered foods	30
21 to 29 mm of maximum unassisted vertical opening.	
With dietary restrictions to full liquid and pureed foods	40
With dietary restrictions to soft and semi-solid foods	30
Without dietary restrictions to mechanically altered foods	20
30 to 34 mm of maximum unassisted vertical opening.	
With dietary restrictions to full liquid and pureed foods	30
With dietary restrictions to soft and semi-solid foods	20
Without dietary restrictions to mechanically altered foods	10

	Rating
Lateral excursion range of motion:	
0 to 4 mm	10
Note (1): Ratings for limited interincisal movement shall not be combined with ratings for limited lateral excursion.	
Note (2): For VA compensation purposes, the normal maximum unassisted range of vertical jaw opening is from 35 to 50 mm.	
Note (3): For VA compensation purposes, mechanically altered foods are defined as altered by blending, chopping, grinding or mashing so that they are easy to chew and swallow. There are four levels of mechanically altered foods: full liquid, puree, soft, and semisolid foods. To warrant elevation based on mechanically altered foods, the use of texture-modified diets must be recorded or verified by a physician.	
* * * * * * *	
9911 Hard palate, loss of:	
Loss of half or more, not replaceable by prosthesis	30
Loss of less than half, not replaceable by prosthesis	20
Loss of half or more, replaceable by prosthesis	10
Loss of less than half, replaceable by prosthesis	0
* * * * * * *	
9916 Maxilla, malunion or nonunion of:	
Nonunion,	
With false motion	30
Without false motion	10
Malunion,	
With displacement, causing severe anterior or posterior open bite	30
With displacement, causing moderate anterior or posterior open bite	10
With displacement, causing mild anterior or posterior open bite	0
Note: For VA compensation purposes, the severity of maxillary nonunion is dependent upon the degree of abnormal mobility of maxilla fragments following treatment (i.e., presence or absence of false motion), and maxillary nonunion must be confirmed by diagnostic imaging studies.	
9917 Neoplasm, hard and soft tissue, benign:	
Rate as loss of supporting structures (bone or teeth) and/or functional impairment due to scarring.	
9918 Neoplasm, hard and soft tissue, malignant	100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals such as loss of supporting structures (bone or teeth) and/or functional impairment due to scarring.	

■ 3. Amend appendix A to part 4 by:
■ a. Revising the entries for diagnostic codes 9900, 9902, and 9903;
■ b. Adding, in numerical order, an entry for diagnostic code 9904;
■ c. Revising the entry for diagnostic code 9905;
■ d. Adding, in numerical order, entries for diagnostic codes 9906, 9907, 9911, and 9912;
■ e. Revising the entry for diagnostic code 9916; and
■ f. Adding, in numerical order, entries for diagnostic codes 9917 and 9918.

The revisions and additions read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic Code No.	
*	*	* * * * * * *
	9900	Criterion September 22, 1978; criterion February 17, 1994; title September 10, 2017.
*	*	* * * * * * *
	9902	Criterion February 17, 1994; evaluation September 10, 2017; title September 10, 2017.
	9903	Criterion February 17, 1994; evaluation September 10, 2017; title September 10, 2017.
	9904	Criterion September 10, 2017.
	9905	Criterion September 22, 1978; evaluation February 17, 1994; evaluation September 10, 2017; title September 10, 2017.
	9906	Removed September 10, 2017.
	9907	Removed September 10, 2017.
*	*	* * * * * * *
	9911	Criterion and title September 10, 2017.
	9912	Removed September 10, 2017.
*	*	* * * * * * *
	9916	Added February 17, 1994; criterion September 10, 2017.
	9917	Added September 10, 2017.
	9918	Added September 10, 2017.

■ 4. Amend appendix B to part 4 by:

■ a. Revising the entries for diagnostic codes 9900, 9902, 9903, and 9905;

■ b. Removing the entries for diagnostic codes 9906 and 9907;

■ c. Revising the entry for diagnostic code 9911;

■ d. Removing the entry for diagnostic code 9912; and

■ e. Adding, in numerical order, entries for diagnostic codes 9917 and 9918.

The revisions and additions read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic Code No.	
* * * * * * *	
Dental and Oral Conditions	
9900	Maxilla or mandible, chronic osteomyelitis, osteonecrosis, or osteoradionecrosis of.
* * * * * * *	
9902	Mandible loss of, including ramus, unilaterally or bilaterally.
9903	Mandible, nonunion of, confirmed by diagnostic imaging studies.
* * * * * * *	
9905	Temporomandibular disorder (TMD).
* * * * * * *	
9911	Hard palate, loss of.
* * * * * * *	
9917	Neoplasm, hard and soft tissue, benign.
9918	Neoplasm, hard and soft tissue, malignant.

■ 5. Amend appendix C to part 4 as follows:

■ a. Under the entry for ''Limitation of motion,'' remove the entry for ''Temporomandibular articulation'' and add in its place an entry for ''Temporomandibular'';

■ b. Under the entry for ''Loss of,'' add in alphabetical order an entry for ''Palate, hard'';

■ c. Revise the entry for ''Mandible'';

■ d. Add in alphabetical order an entry for ''Maxilla or mandible, chronic osteomyelitis, osteonecrosis, or osteoradionecrosis of'';

■ e. Remove the entries for ''Palate, hard'' and ''Ramus'' located below the entry for ''Nose, part of, or scars'' and above the entry for ''Skull, part of'';

■ f. Under the entry for ''Neoplasms,'' under both ''Benign'' and ''Malignant,'' add in alphabetical order an entry for ''Hard and soft tissue'';

■ g. Under the entry for ''Nonunion,'' remove the entry for ''Mandible'' and add in its place an entry for ''Mandible, confirmed by diagnostic imaging studies'';

■ h. Remove the entry for ''Osteomyelitis maxilla or mandible''.

The additions and revisions read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic Code No.
* * * * * * *	
Limitation of motion:	
* * * * * * *	
Temporomandibular	9905
* * * * * * *	
Loss of:	
* * * * * * *	
Palate, hard	9911
* * * *.	
Mandible:	
Including ramus, unilaterally or bilaterally	9902
* * * * * * *	
Maxilla or mandible, chronic osteomyelitis, osteonecrosis, or osteoradionecrosis of	9900
* * * * * * *	
Neoplasms:	
Benign:	
* * * * * * *	
Hard and soft tissue	9917

							Diagnostic Code No.
*	*	*	*	*	*	*	
Malignant:							
*	*	*	*	*	*	*	
Hard and soft tissue							9918
*	*	*	*	*	*	*	
Nonunion:							
Mandible, confirmed by diagnostic imaging studies							9903
*	*	*	*	*	*	*	

[FR Doc. 2017–16132 Filed 8–2–17; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0676; FRL–9961–69]

Ethaboxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ethaboxam in or on Ginseng; Pepper/eggplant, subgroup 8–10B; Vegetable, cucurbit, group 9; and Vegetable, tuberous and corm, subgroup 1C. Valent USA Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 3, 2017. Objections and requests for hearings must be received on or before October 2, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0676, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0676 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 2, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0676, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 25, 2016 (81 FR 24044) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8383) by Valent USA Corporation, 1600 Riviera Avenue,

Suite 200, Walnut Creek, CA 94596. The petition requested that 40 CFR 180.622 be amended by establishing tolerances for residues of the fungicide ethaboxam, *N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethlyamino)-5-thiazolecarboxamide, in or on ginseng at 0.09 parts per million (ppm); Pepper/eggplant (Crop Subgroup 8–10B) at 0.6 ppm; Cucurbit Vegetables (Crop Group 9) at 0.3 ppm; and Tuberous and corm Vegetable Subgroup 1C at 0.01 ppm. That document referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected proposed commodity definitions and revised certain proposed crop tolerances. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ethaboxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with ethaboxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology database for ethaboxam is complete. The male reproductive system is a target for ethaboxam, with alterations to the male reproductive organs as well as functional effects on male reproduction observed in several oral subchronic and chronic rat studies. In subchronic studies in rats, there were severe testicular alterations including small testes, decreased testicular weight and atrophy, abnormal spermatids in the testes, and interstitial cell hyperplasia. In the epididymis, there were small epididymides, decreased epididymal weights, abnormal spermatogenic cells, and absent spermatozoa. Decreased seminal vesicle and prostate weights were also observed. Effects were also seen after chronic exposure including decreased epididymal and seminal vesicle weights, seminiferous tubule atrophy, small/flaccid testes and epididymides, abnormal spermatogenic cells in the epididymal duct, absent sperm, epididymal vacuolation, and reduced colloid in the prostate. Fine vacuolation of the adrenal zona glomerulosa was also observed in both sexes in the rat studies, along with decreased body weight in females. There were no treatment-related male reproductive effects observed in mice, but there were effects seen in the liver. In mice, increased liver weights associated with centrilobular hypertrophy and liver histopathology (eosinophilic foci) were observed after chronic exposure. In dogs, decreased body weight and body weight gain, decreased thymus weights and thymus atrophy/involution, and hematopoiesis of the spleen were noted after subchronic exposure. No treatment-related effects were noted in dogs after chronic exposure. There is no concern for neurotoxicity or immunotoxicity after exposure to ethaboxam. No evidence of increased quantitative or qualitative susceptibility was seen in the developmental toxicity studies in rats and rabbits; however, increased qualitative susceptibility was seen in the rat reproduction study where decreased body weight, decreased viability, and delayed sexual maturation were seen in offspring animals in the presence of limited parental effects (decreased body weight and body weight gain). Ethaboxam is classified as having ''suggestive evidence of carcinogenic potential,'' based on an increased incidence of benign Leydig cell tumors in male rats. The Agency has determined that quantification of cancer risk using a non-linear approach (based on the POD of 5.5 mg/kg/day for establishing a chronic reference dose) would adequately account for all chronic toxicity since the POD is 6-fold lower than the lowest dose that induced tumors.

Specific information on the studies received and the nature of the adverse effects caused by ethaboxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Ethaboxam. Human Health Risk Assessment for the Proposed First Food Uses on Fruiting Vegetables (Pepper/Eggplant Subgroup 8–10B), Cucurbit Vegetables (Group 9), Ginseng, and Potato (Tuberous and Corm Vegetable Subgroup 1C)'' at pages 27–32 in docket ID number EPA–HQ–OPP–2015–0676.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for ethaboxam used for

human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ETHABOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations)	No appropriate endpoint attributable to a single dose identified.		
Chronic dietary (All populations)	NOAEL= 5.5 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.055 mg/kg/day. cPAD = 0.055 mg/kg/day	Combined Chronic/Carcinogenicity-Rat. LOAEL = 16.4 mg/kg/day based on effects observed in the male reproductive organs (testes, epididymides, prostate, seminal vesicles).
Cancer (Oral, dermal, inhalation)	Classification: ''Suggestive Evidence of Carcinogenicity'', based on an increased incidence of benign Leydig Cell tumors in males. Cancer risk has been assessed using a non-linear approach.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. FQPA SF = Food Quality Protection Act safety factor. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to ethaboxam, EPA considered exposure under the petitioned-for tolerances as well as all existing ethaboxam tolerances in 40 CFR 180.622. EPA assessed dietary exposures from ethaboxam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for ethaboxam; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the 2003–2008 U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). Tolerance-level residues and 100% crop treated were assumed for all crops. Empirical data indicate that residues of ethaboxam in processed grape (*e.g.,* juice, raisins, etc.) and potato (*e.g.,* flakes, chips, etc.) commodities are not expected to exceed the tolerance level for grapes or potatoes; therefore, no concentration factors were used in this analysis.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to ethaboxam. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for ethaboxam. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

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

Based on the Pesticide in Water Calculator (PWC) v1.50 and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of ethaboxam for chronic exposures for non-cancer assessments are estimated to be 3.91 ppb for surface water and 7.4 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 7.4 ppb was used to assess the contribution to drinking water.

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

Ethaboxam is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found ethaboxam to share a common mechanism of toxicity with any other substances, and ethaboxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that ethaboxam does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the

FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is evidence of increased qualitative susceptibility in the rat developmental and reproduction studies. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for ethaboxam, the degree of concern for prenatal and postnatal effects observed in the studies is low based on the following: The developmental/offspring effects observed in the studies are well characterized and occur in the presence of maternal toxicity; a clear NOAEL has been identified in both of the studies; and there are no residual uncertainties for pre-and/or postnatal toxicity. Furthermore, the toxicology endpoint established for risk assessment is based on a lower NOAEL than the reproductive NOAEL, and thus is considered protective of developmental/offspring effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for ethaboxam is complete.

ii. There is no indication that ethaboxam is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is evidence of increased qualitative susceptibility in the rat reproduction study, the offspring effects observed in the study are well characterized and clear NOAELs/LOAELs have been identified in the study for the effects of concern. Additionally, the points of departure (PODs) selected for risk assessment are protective of potential offspring effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to ethaboxam in drinking water. These assessments will not underestimate the exposure and risks posed by ethaboxam.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, ethaboxam is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to ethaboxam from food and water will utilize 36% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for ethaboxam.

3. *Short-term and intermediate-term risk.* Short-term (and intermediate-term) aggregate exposure takes into account short-term (and intermediate-term) residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Although short-term and intermediate-term adverse effects were identified, ethaboxam is not registered for any use patterns that would result in short-term or intermediate-term residential exposure. Because there is no residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term or intermediate-term risk), no further assessment of residential risk is necessary. EPA relies on the chronic dietary risk assessment for evaluating short-term and intermediate-term risk for ethaboxam.

4. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has determined that the chronic reference dose (cRfD) is protective of the potential cancer effects. Because chronic exposure does not exceed the Agency's level of concern, EPA concludes that ethaboxam does not pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology Liquid Chromotography with tandem mass spectrometrometry (LC–MS/MS) is available to enforce the tolerance expression.

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

B. International Residue Limits

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

MRLs have not been established by Codex for residues of ethaboxam on the commodities in this action.

C. Revisions to Petitioned-For Tolerances

To reflect the correct commodity definitions, EPA revised the proposed commodity listings for Potato (Tuberous and Corm Vegetable Subgroup 1C); Peppers (Pepper/Eggplant Crop Subgroup 8–10B); and Cucurbit Vegetables (Crop Group 9) to Vegetable, tuberous and corm, subgroup 1C; Pepper/eggplant, subgroup 8–10B; and Vegetable, cucurbit, group 9, respectively.

The petitioner requested that the tolerances for Pepper/eggplant, subgroup 8–10B be set at 0.6 ppm and Ginseng be set at 0.09 ppm; however, the Agency is establishing the tolerances at 0.90 ppm and 0.10 ppm, respectively, based on Agency calculations using data obtained from the submitted residue studies. The Agency used the Organization of Economic Cooperation and Development (OECD) maximum residue limit (MRL) calculation

procedures to derive the recommended levels. For crop groups, and per EPA's current policy, a tolerance level for each representative commodity was calculated separately, and then the maximum value within each crop group was selected as the tolerance level.

All of EPA's tolerance levels are expressed to provide sufficient precision for enforcement purposes. This may include the addition of trailing zeros, as was the case for Vegetable, cucurbit, group 9 for which a tolerance of 0.3 ppm was proposed and a tolerance at 0.30 ppm is being established.

Finally, EPA is revising the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of ethaboxam not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of ethaboxam (*N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethlyamino)-5-thiazolecarboxamide), including its metabolites and degradates, in or on Ginseng at 0.10 ppm; Pepper/eggplant, subgroup 8–10B at 0.90 ppm; Vegetable, cucurbit, group 9 at 0.30 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.01 ppm. Compliance with the tolerance levels specified above is to be determined by measuring only ethaboxam (*N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethlyamino)-5-thiazolecarboxamide).

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 29, 2017.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.622, paragraph (a) is revised to read as follows:

§ 180.622 Ethaboxam; tolerances for residues.

(a) *General.* Tolerances are established for residues of ethaboxam, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only ethaboxam (*N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethylamino)-5-thiazolecarboxamide) in or on the commodity.

Commodity	Parts per million
Ginseng	0.10
Grape [1]	6.0
Pepper/eggplant subgroup 8–10B	0.90
Vegetable, cucurbit, group 9	0.30
Vegetable, tuberous and corm, subgroup 1C	0.01

[1] There is no U.S. registration as of September 27, 2006.

* * * * *

[FR Doc. 2017–16371 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0679; FRL–9963–02]

Cyclaniliprole; Pesticide Tolerances and Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyclaniliprole in or on multiple commodities that are identified and discussed later in this document. ISK Biosciences Corporation requested these tolerances under the

Federal Food, Drug, and Cosmetic Act (FFDCA). Additionally, this regulation also establishes an exemption from the requirement of a tolerance for indirect or inadvertent residues of cyclaniliprole on multiple commodities identified and discussed later in this document.

DATES: This regulation is effective August 3, 2017. Objections and requests for hearings must be received on or before October 2, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0679, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0679 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 2, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0679, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 6, 2015 (80 FR 18327) (FRL–9924–00), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8253) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide cyclaniliprole, 3-bromo-*N*-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl) amino]carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on the following commodities: Pome Fruit (Crop Group 11–10) at 0.3 parts per million (ppm); Tree Nuts (Crop Group 14–12) at 0.02 ppm; Stone Fruit (Crop Group 12–12) at 0.7 ppm; Fruiting Vegetables (Crop Group 8–10) at 0.2 ppm; Cucurbit Vegetables, (Crop Group 9) at 0.2 ppm; and Small Fruit Vine Climbing Subgroup, except Fuzzy Kiwifruit (Crop Group 13–07F) at 0.9 ppm. Additionally tolerances are requested for residues of cyclaniliprole in or on the crops in the proposed Crop Subgroup 4–14A, Leafy greens subgroup at 7.0 ppm, including amaranth, Chinese; amaranth, leafy; aster, Indian; blackjack; cat's whiskers; chervil, fresh leaves; cham-chwi; cham-namul; chipilin; chrysanthemum, garland; cilantro, fresh leaves; corn salad; cosmos; dandelion; dang-gwi; dillweed; dock; dol-nam-mul; ebolo; endive; escarole; fameflower; feather cockscomb; good king henry; huauzontle; jute, leaves; lettuce, bitter; lettuce, head; lettuce, leaf; orach; parsley, fresh leaves; plantain, buckhorn; primrose, English; purslane, garden; purslane, winter; radicchio; spinach; spinach, malabar; spinach, New Zealand; spinach, tanier; swiss chard; and violet, Chinese; crops in the proposed Crop Subgroup 4–14B, *Brassica* leafy greens subgroup at 15 ppm, including arugula; broccoli raab; broccoli, Chinese; cabbage, abyssinian; cabbage, seakale; Chinese cabbage, bok choy; collards; cress, garden; cress, upland; hanover salad; kale; maca; mizuna; mustard greens; radish, leaves; rape greens; rocket, wild; shepherd's purse; turnip greens; and watercress; crops in the proposed Crop Subgroup 22B, Leaf petiole vegetable subgroup at 7.0 ppm, including Cardoon; celery; celery, Chinese; fuki; rhubarb; udo; zuiki; and the crops in the proposed Crop Group 5–14, *Brassica* Head and Stem Vegetable at 1.5 ppm, including broccoli; Brussels sprouts; cabbage; cabbage, Chinese, napa; and cauliflower.

Tolerances are also requested for residues of cyclaniliprole in or on the following animal feed commodities: almond, hulls at 8.0 ppm; apple, wet pomace at 0.96 ppm; and in the following animal tissues and meat byproducts: Cattle, fat at 0.08 ppm; cattle, kidney at 0.08 ppm; cattle, liver at 0.1 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, fat at 0.08 ppm; goat, kidney at 0.08 ppm; goat, liver at 0.1 ppm; goat, meat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, fat at 0.08 ppm; horse, kidney at 0.08 ppm; horse, liver at 0.1 ppm; horse, meat at 0.02 ppm; horse, meat byproducts at 0.02 ppm; milk at 0.01 ppm; sheep, fat at 0.08 ppm; sheep, kidney at 0.08 ppm; sheep, liver at 0.1 ppm; sheep, meat at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. In addition, a tolerance was requested for imported Tea (dried and instant) at 40 ppm. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of November 23, 2015 (80 FR 72941) (FRL–9936–73), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing ISK's amendment to its pesticide petition (PP 4F8253). The amended petition requested, in addition to the tolerances requested in the original petition, an exemption from the requirement of a tolerance for indirect or inadvertent residues of cyclaniliprole in or on all food commodities, not already covered by a tolerance. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to that comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what was requested by the petitioner for multiple commodities. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyclaniliprole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyclaniliprole follows.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

No single or repeated dose study performed by any route of exposure produced an adverse effect following cyclaniliprole exposure below, at, or above the limit dose (1,000 mg/kg/day). In short- and long-term studies in rats and mice, the most consistent finding was adaptive liver effects, which often consisted of slight increases in liver weight without associated clinical chemistry and histopathological changes, and it was seen mostly at or above the limit dose (1,000 mg/kg/day). In dogs, both subchronic and chronic studies showed increases in liver weight, centrilobular hepatocellular hypertrophy, and elevated levels of alkaline phosphatase (ALP) at sub-limit dose levels. However, these findings were not considered as adverse because of the following: (1) ALP increase in dogs is a common laboratory finding and could be attributed to many factors such as corticosterone release, young dogs often have high and variable ALP values related to bone growth, cholestasis, and pharmacologically mediated hepatic drug metabolizing enzyme induction; (2) no histopathological changes were seen at any dose level tested; (3) the liver effects showed no progression of toxicity or increase in the number of parameters affected in the chronic study (1-year) relative to the subchronic study; and (4) no liver effects were seen in toxicity studies in rats and mice at or above the limit dose (1,000 mg/kg/day). In addition, a structurally related chemical, chlorantraniliprole, tested up to the limit dose in dogs did not demonstrate liver effects.

No toxicity was seen in rat and rabbit developmental toxicity and in rat reproduction studies which were tested up to the limit dose (1,000 mg/kg/day). Therefore, there is no evidence that cyclaniliprole produces increased susceptibility with prenatal or postnatal exposures. Cyclaniliprole is classified as ''Not likely to be Carcinogenic to Humans'' based on no increase in treatment-related tumor incidence in the chronic toxicity study in rats and in carcinogenicity studies in rats and mice. Cyclaniliprole produced no genotoxicity. A dermal toxicity study tested at the limit dose did not produce any systemic toxicity, which was consistent with the finding of low dermal absorption.

Specific information on the studies received for cyclaniliprole as well as the no-observed-adverse-effect-level (NOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Cyclaniliprole: Human Health Risk Assessment for the Proposed New Insecticide Active Ingredient'' dated September 12, 2015 in docket ID number EPA–HQ–OPP–2014–0679.

Based on the analysis of the available cyclaniliprole toxicological studies, there is no adverse toxicity seen in any of the required submitted toxicology studies, and no toxicity endpoint and point of departure are established for human health risk assessment.

Cyclaniliprole is proposed for use on a variety of crops. Humans could potentially be exposed to cyclaniliprole residues in food because cyclaniliprole may be applied directly to growing crops. These applications can also result in cyclaniliprole reaching surface and ground water, both of which can serve as sources of drinking water. There are no proposed uses in residential settings; therefore, there are no anticipated residential exposures.

Based on the toxicological profile of cyclaniliprole, EPA has concluded that the FFDCA requirements to retain an additional safety factor for protection of infants and children and to consider

cumulative effects do not apply. Section 408(b)(2)(C) requires an additional tenfold margin of safety in the case of threshold risks, which are not present in this case. Section 408(b)(2)(D)(v) requires consideration of information concerning cumulative effects of substances that have a common mechanism of toxicity, which cyclaniliprole does not have.

Based on the available data indicating a lack of adverse effects from exposure to cyclaniliprole, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyclaniliprole.

IV. Other Considerations

A. Analytical Enforcement Methodology

Method JSM0269 was developed for plant commodities, and Method JSM0277 was developed for livestock commodities. Residues of cyclaniliprole are extracted from crops using acetonitrile and cleaned up by solid phase extraction. Extracted residue levels are determined by liquid chromatography with tandem mass spectrometry (LC–MS/MS). Residues of cyclaniliprole are extracted from livestock using acetonitrile and cleaned up by liquid-liquid partition with hexane followed by SPE. Extracted residue levels are determined by LC–MS/MS in positive ion spray mode.

Multiresidue methods testing data have been submitted for cyclaniliprole and NK–1375. The data indicate that the multiresidue methods (Protocols A through G) are not suitable for the analysis of cyclaniliprole, so the multiresidue methods cannot serve as enforcement methods. The multiresidue data have been sent to FDA.

Adequate enforcement methodology (LC–MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for cyclaniliprole.

C. Response to Comments

A comment was received from an anonymous commenter objecting to EPA requesting denial of this petition and stating that ''food should not be contaminated with these chemicals.'' The existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) states that tolerances may be set when the pesticide meets the safety standard imposed by that statute. As required by that statute, EPA conducted a comprehensive assessment of cyclaniliprole, including its potential for carcinogenicity. Based on its assessment of the available data, the Agency believes that given the observed lack of toxicity of this chemical, no risks of concern are expected. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to cyclaniliprole.

D. Revisions to Petitioned-For Tolerances

Tolerances were requested for individual crops in the proposed Crop Subgroup 4–14A, Leafy greens subgroup at 7.0 ppm; crops in the proposed Crop Subgroup 4–14B, *Brassica* leafy greens subgroup at 15 ppm; crops in the proposed Crop Subgroup 22B, Leaf petiole vegetable subgroup at 7.0 ppm and the crops in the proposed Crop Group 5–14: *Brassica* Head and Stem Vegetable at 1.5 ppm. These crop groups were proposed in a Proposed Rule that published in the **Federal Register** of November 14, 2014 (79 FR 68153). In the time since the petition was initially filed, these crop group/subgroups have been established, although with a slightly different numbering based on the year in which the crop groups were finalized, *i.e.,* since the rule was published in 2016, the groups end in a –16, instead of –14 when they were proposed. See May 3, 2016 (85 FR 26471). Therefore, EPA is establishing the subgroup/group tolerances as requested but with the updated names with one exception. EPA is not establishing a tolerance for subgroup 22B since residue field trial data (celery) were not provided to support the establishing a tolerance for the commodities in subgroup 22B.

Additionally, the EPA is establishing a tolerance for Vegetable, leafy, group 4–16 at 15 ppm instead of the requested tolerance for residues in or on the leafy greens subgroup 4–16A at 7.0 ppm and *Brassica* leafy greens subgroup 4–16B at 15 ppm. Based on the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures and residue data for head lettuce, leaf lettuce, and spinach, the tolerance level would be 8.0 ppm for leafy greens subgroup 4–16A. However, instead of establishing the two subgroup tolerances, in order to harmonize with Canada which has established a crop group, Leafy Vegetables (CG 4–13) maximum residue level (MRL) at 15 ppm, EPA is establishing a tolerance for Vegetable, leafy, group 4–16 at 15 ppm.

The EPA is also establishing lower tolerance levels than requested for the following commodities because the residue of concern is parent only instead of parent and its metabolite NK–1375: Almond hulls, reduced from 8 to 6.0 ppm; wet apple pomace, reduced from 0.96 to 0.50 ppm; Vegetable, *Brassica,* head and stem, group 5–16 reduced from 1.5 to 1.0 ppm; cucurbit vegetables, crop group 9, reduced from 0.2 to 0.15 ppm; small vine climbing fruit, except fuzzy kiwifruit, crop group 13–07F, reduced from 0.9 to 0.80 ppm; and for the following commodities for each animal (cattle, goat, horse, and sheep)—fat, reduced from 0.08 to 0.015 ppm; kidney (now included in meat byproducts), reduced from 0.08 to 0.015 ppm; meat, reduced from 0.02 to 0.01 ppm; meat byproducts, reduced from 0.02 to 0.015 ppm; and liver, reduced from 0.1 to 0.015 ppm.

Based on OECD tolerance calculation procedures, EPA is also establishing higher tolerance levels than requested for the following commodities: The stone fruit crop group 12–12, increased from 0.7 to 1.0 ppm; the tree nuts crop group 14–12, increased from 0.02 to 0.03 ppm, and tea, dried leaves, increased from 40 to 50 ppm. No tolerance is needed for tea, instant (dry form) since residues are covered by the tolerance on tea, dried.

EPA is establishing an increased tolerance on milk from 0.01 ppm to 0.015 ppm to harmonize with Canada.

Finally, tolerances were requested for residues in/on kidney and liver of cattle, goat, horse, and sheep. According to current EPA policy, residues for liver

and kidney will be covered by tolerances for residues in/on meat byproducts so separate tolerances are not needed.

V. Conclusion

Although the lack of toxicity supports a safety finding for an exemption from the requirement of tolerance for all crops, EPA is establishing tolerances for residues resulting from direct applications to certain commodities because the petitioner requested them for international trade purposes. Tolerances are established for residues of cyclaniliprole, 3-bromo-*N*-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl) amino]carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on Pome Fruit (Crop Group 11–10) at 0.30 parts per million (ppm); Nut, tree (Crop Group 14–12) at 0.03 ppm; Stone Fruit (Crop Group 12–12) at 1.0 ppm; Fruiting Vegetables (Crop Group 8–10) at 0.20 ppm; Cucurbit Vegetables, (Crop Group 9) at 0.15 ppm; Small Fruit Vine Climbing Subgroup except Fuzzy Kiwifruit (Crop Group 13–07F) at 0.80 ppm; Vegetable, leafy, group 4–16 at 15 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at 1.0 ppm; Milk at 0.015 ppm; tea, dried leaves at 50 ppm; Almond, hulls at 6.0 ppm; Apple, wet pomace at 0.50 ppm; cattle, goat, horse, and sheep fat at 0.015 ppm; cattle, goat, horse, and sheep meat at 0.01 ppm; and cattle, goat, horse, and sheep meat byproducts at 0.015 ppm.

Additionally, an exemption from the requirement of a tolerance is established for indirect or inadvertent residues of cyclaniliprole, 3-bromo-*N*-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl) amino]carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on all raw agricultural commodities, except for those commodities with tolerances established.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 30, 2017.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.694 to subpart C to read as follows:

§ 180.694 Cyclaniliprole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide cyclaniliprole, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only cyclaniliprole, 3-bromo-N-[2-bromo-4-chloro-6-[[(1-cyclopropylethyl)amino]carbonyl] phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on the commodity.

Commodity	Parts per million
Almond, hulls	6.0
Apple, wet pomace	0.50
Cattle, fat	0.015
Cattle, meat	0.01
Cattle, meat byproducts	0.015
Fruit, pome, group 11–10	0.30
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.80
Fruit, stone, group 12–12	1.0
Goat, fat	0.015
Goat, meat	0.01
Goat, meat byproducts	0.015
Horse, fat	0.015
Horse, meat	0.01
Horse, meat byproducts	0.015
Milk	0.015
Nut, tree, group 14–12	0.03
Sheep, fat	0.015
Sheep, meat	0.01
Sheep, meat byproducts	0.015
Tea, dried[1]	50
Vegetable, *Brassica,* head and stem, group 5–16	1.0
Vegetable, cucurbit, group 9	0.15
Vegetable, fruiting, group 8–10	0.20
Vegetable, leafy, group 4–16	15

[1] There are no U.S. registrations for Tea.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

■ 3. Add § 180.1344 to subpart D to read as follows:

§ 180.1344 Cyclaniliprole; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for indirect and inadvertent residues of the insecticide cyclaniliprole, including its metabolites and degradates, in or on all raw agricultural commodities not listed in paragraph (a) of § 180.694, when residues are present therein as a result of subsequent uptake by crops rotated into fields where the crops in § 180.694 (a) were treated with cyclaniliprole.

[FR Doc. 2017–16375 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2016–0428, 0430, 0432, 0434, 0435, 0436 and 0437; FRL–9965–31–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds seven sites to the General Superfund section of the NPL.

DATES: The document is effective on September 5, 2017.

ADDRESSES: Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Cathy Amoroso, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8637.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov.* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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- I. National Technology Transfer and Advancement Act (NTTAA)
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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an

imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section'') and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions'' (40 CFR 300.5). However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site,

as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's Internet site at *https://www.epa.gov/superfund/superfund-remedial-performance-measures#cc_anchor.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's Web site at *http://semspub.epa.gov/src/document/HQ/174024.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *https://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/County, State	Docket ID No.
Post and Lumber Preserving Co. Inc	Quincy, FL	EPA–HQ–OLEM–2016–0428.
Microfab, Inc. (Former)	Amesbury, MA	EPA–HQ–OLEM–2016–0430.
Old HWY 275 and N 288th Street	Valley, NE	EPA–HQ–OLEM–2016–0432.
Saint-Gobain Performance Plastics	Village of Hoosick Falls, NY	EPA–HQ–OLEM–2016–0434.
The Battery Recycling Company	Bo. Cambalache, PR	EPA–HQ–OLEM–2016–0435.
Former Custom Cleaners	Memphis, TN	EPA–HQ–OLEM–2016–0436.
Highway 18 Ground Water	Kermit, TX	EPA–HQ–OLEM–2016–0437.

B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score and a list of documents referenced in the documentation record for each site.

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name* or by contacting the Superfund docket (see contact information in the beginning portion of this document).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following seven sites to the General Superfund section of the NPL. These sites are being added to the NPL based on HRS score.

GENERAL SUPERFUND SECTION

State	Site name	City/County
FL	Post and Lumber Preserving Co. Inc	Quincy.
MA	Microfab, Inc. (Former)	Amesbury.
NE	Old HWY 275 and N 288th Street	Valley.
NY	Saint-Gobain Performance Plastics	Village of Hoosick Falls.
PR	The Battery Recycling Company	Bo. Cambalache.
TN	Former Custom Cleaners	Memphis.
TX	Highway 18 Ground Water	Kermit.

B. What did the EPA do with the public comments it received?

One site being added to the NPL in this rule, Saint-Gobain Performance Plastics (Village of Hoosick Falls, NY), received comments related to HRS scoring. The responses to those comments and the impact those comments have on the site score, if any, are contained in a support document available in the public docket concurrently with this rule.

Four of the sites received comments requesting the sites be listed on the NPL. These sites are Post and Lumber Preserving Co. Inc. (Quincy, FL), Old HWY 275 and N 288th Street (Valley, NE), The Battery Recycling Company (Bo. Cambalache, PR) and Highway 18 Ground Water (Kermit, TX). One commenter's submission to the Old HWY 275 and N 288th Street docket stated that all eight sites proposed on September 9, 2016 (81 FR 62428) should be added to the NPL.

The docket for the Post and Lumber Preserving Co. Inc. (Quincy, FL) site received seven comments. Of these comments, two were intended for the Post and Lumber Co. Inc. site and supported listing. One comment was intended for the Old HWY 275 and N 288th Street site as discussed below. The remaining comments were intended for the Saint-Gobain Performance Plastics site and are addressed in the support document for that site. One comment that solely supported the listing was included in a commenter's submission to the Anaconda Copper Mine docket as well as the Post and Lumber Preserving Co. Inc. docket. This comment came from a resident who lives near the Post and Lumber Preserving Co. Inc. site and is concerned about the magnitude of hazardous material at the site. The comment mentions that pollution is continuing to impact surrounding wetland areas. This commenter supports listing to allow the contamination at the site to be addressed and suggested that the removal of the contaminated soil mound should be given the highest priority.

The second comment described several contaminants found at the site (arsenic, dioxin and pentachlorophenol) and the health effects of exposure to these contaminants. The commenter concluded that the Post and Lumber Preserving Co. Inc. site should be added to the NPL to address the contamination at the site. In response to these two comments, the EPA is listing the site to study the risks and to determine what, if any, actions need to be taken to ensure protection of human health and the environment.

The Old HWY 275 and N 288th Street (Valley, NE) site received one comment from the Ponca Tribe of Nebraska in support of listing. This comment was included in the dockets for Old HWY 275 and N 288th Street and Post and Lumber Preserving Co. Inc. The commenter expressed concern for contamination at the Old HWY 275 and N 288th Street site and noted the potential for vapor intrusion contamination into residential basements, stating that all homes on top of or near the ground water plume should be tested for vapor intrusion. The Ponca Tribe would like to have the site added to the NPL to contain the ground water plume and address contamination at the site. In response to this comment, the EPA is listing the site on the NPL to study the risks and to determine what, if any, remediation is necessary.

The Battery Recycling Company (Bo. Cambalache, PR) site received one comment in support of listing. The commenter discussed lead contamination at battery recycling facilities and the resulting human health and environmental impacts. The commenter concluded that the site should be added to the NPL so that the contamination at the site can be addressed. The EPA agrees with the commenter and is listing the site so that further study can be done to determine what, if any, remediation is necessary. An additional comment that appears to be related to the Microfab, Inc. (Former) site was posted in The Battery Recycling Company docket and contains the text ''For it! Microfab Inc.''

The Highway 18 Ground Water (Kermit, TX) site received one comment in support of listing and a comment related to the Saint-Gobain Performance Plastics site that was posted to multiple site dockets. The comment related to the Highway 18 Ground Water site described the site background and the health effects of trichloroethene and tetrachloroethene, and concluded that the Highway 18 Ground Water site should be added to the NPL to address the contamination at the site. The EPA agrees with this comment and is listing the site to evaluate the risks posed by the site and to determine what, if any, remediation is necessary.

IV. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the

preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

K. Congressional Review Act

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

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 27, 2017.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

■ 2. Table 1 of appendix B to part 300 is amended by adding entries for ''Post and Lumber Preserving Co. Inc.'', ''Microfab, Inc. (Former)'', ''Old HWY 275 and N 288th Street'', ''Saint-Gobain Performance Plastics'', ''The Battery Recycling Company'', ''Former Custom Cleaners'', and ''Highway 18 Ground Water'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
*	* * *	* * *	* *
FL	Post and Lumber Preserving Co. Inc	Quincy	
*	* * *	* * *	* *
MA	Microfab, Inc. (Former)	Amesbury	
*	* * *	* * *	* *
NE	Old HWY 275 and N 288th Street	Valley	
*	* * *	* * *	* *
NY	Saint-Gobain Performance Plastics	Village of Hoosick Falls	
*	* * *	* * *	* *
PR	The Battery Recycling Company	Bo. Cambalache	
*	* * *	* * *	* *
TN	Former Custom Cleaners	Memphis	
*	* * *	* * *	* *
TX	Highway 18 Ground Water	Kermit	
*	* * *	* * *	* *

[a] Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2017–16172 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

Commercial Driver's License Standards: Regulatory Guidance Concerning the Issuance of Commercial Learner's Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Regulatory guidance.

SUMMARY: FMCSA announces regulatory guidance clarifying that State Driver Licensing Agencies (SDLAs) may agree to facilitate the commercial learner's permit (CLP) application process and to administer the commercial driver's license (CDL) general knowledge test to individuals who are not domiciled in the State. Today's guidance makes clear that SDLAs may accept applications for CLPs and administer the general knowledge test to individuals taking commercial motor vehicle driver training in that State, but who are not domiciled there, provided that: The SDLA administering the general knowledge test transmits the test results directly, securely, and electronically to the applicant's State of domicile; and the State of domicile agrees to accept the test results and issue the CLP. While today's guidance is in answer to general knowledge testing as addressed in FMCSA regulations, we note that this regulatory guidance is consistent with the Agency's October 13, 2016, final rule which amended the CDL regulations to ease the transition of military personnel into civilian careers driving commercial motor vehicles (CMVs).

DATES: *Regulatory Guidance:* The regulatory guidance is applicable August 3, 2017. The guidance expires August 3, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the Commercial Driver's License Division, Office of Safety Programs, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Phone: 202–366–0831; email: *nikki.mcdavid@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 13, 2016, FMCSA published ''Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver's License Act of 2012'' (2016 Final Rule) (81 FR 70634). This rule allows a State to accept applications from active duty military personnel who are stationed in that State as well as administer the written and skills test for a CLP or CDL. States that choose to accept such applications are required to transmit the test results electronically to the State of domicile of the military personnel. The State of domicile may then issue the CLP or CDL on the basis of those test results. During the rulemaking proceeding, the American Trucking Associations (ATA) expressed an interest in allowing all drivers to take both the written and skills tests outside their State of domicile and requested that FMCSA issue a Supplemental Notice of Proposed Rulemaking on that subject. The FMCSA declined to address the issue at that time. It should be noted, however, that States of domicile are already required by 49 CFR 383.79 to accept skills tests administered by another state. Subsequently, in January 2017, the ATA requested regulatory guidance clarifying that SDLAs may accept the results of knowledge tests taken in another State to ease the travel burden on civilian CLP applicants attending a truck driver training school outside of their State of domicile. Based upon a review of the CDL statutes and the 2016 Final Rule, FMCSA has determined that regulatory guidance would clarify the flexibility allowed under the existing statutes and regulations.

Specifically, section 383.73(a)(2)(i) mandates that a State ''require the applicant to make the certifications, pass the tests, and provide the information as described in § 383.71(a)(2).'' Neither § 383.71 nor § 383.73 requires that these actions take place in the State of domicile. However, the State of domicile must continue to comply with § 383.73(h) by creating the Commercial Driver Licensing Information System (CDLIS) record and issuing the physical CLP or CDL.

II. Regulatory Guidance

Based on the forgoing, FMCSA issues the following guidance.

Regulatory Guidance to 49 CFR Part 383—Commercial Driver's License Standards Section 383.73 State Procedures

Question: May States accept applications for a CLP from individuals who are not domiciled in the State but who receive CDL training within the State, and administer the knowledge test to these individuals?

Guidance: Yes. Section 383.73 does not prohibit States from accepting and processing CLP applications from out-of-State applicants (*e.g.,* individuals who are not domiciled in the State but who receive training there) and administering the knowledge test to such applicants, provided there is agreement between the testing State and the applicant's State of domicile. In particular: (1) The testing State must administer the general knowledge test in accordance with 49 CFR part 383, subparts F, G, and H; (2) transmission of general knowledge test results and any other supporting documentation shall occur by a direct, secure, electronic means to the State of domicile; and (3) in accordance with § 383.73(h), only the State of domicile may create the CDLIS record and issue the physical CLP. Ultimately, the responsibility for compliance with all requirements of § 383.71 and § 383.73 remains with the State of domicile. Under 49 CFR 383.79, States of domicile are already required to accept skills test results from other States; this guidance clarifies that States of domicile may (but are not required to) accept knowledge test results from other States in the same manner. This guidance shall not be construed to allow a State to issue a CLP or CDL to an individual who is not domiciled in that State. Both the CLP and the CDL must be issued by the State of domicile, as required by 49 U.S.C. 31311(a)(12)(A).

Expiration Date for the Regulatory Guidance

In accordance with the requirement in Section 5203(a)(2)(A) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015, the guidance above will be posted on FMCSA's Web site, *http://www.fmcsa.dot.gov* and expires no later than August 3, 2022. The Agency will then consider whether the guidance should be withdrawn, reissued for another period of up to five years, or incorporated into the safety regulations at that time.

Issued on: July 26, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

[FR Doc. 2017–16338 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345–3525–02]

RIN 0648–XF581

Snapper-Grouper Fishery of the South Atlantic; 2017 Commercial Accountability Measure and Closure for the South Atlantic Other Jacks Complex (Lesser Amberjack, Almaco Jack, and Banded Rudderfish)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the commercial sector for the Other Jacks Complex (lesser amberjack, almaco jack, and banded rudderfish) in the South Atlantic for the 2017 fishing year through this temporary rule. NMFS projects that commercial landings of the Other Jacks complex will reach their combined commercial annual catch limit (ACL) by August 4, 2017. Therefore, NMFS closes the commercial sector for this complex on August 4, 2017, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, August 4, 2017, until 12:01 a.m., local time, January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes lesser amberjack, almaco jack, and banded rudderfish, which combined are the Other Jacks Complex, and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The combined commercial ACL for the Other Jacks Complex is 189,422 lb (85,920 kg), round weight. Under 50 CFR 622.193(l)(1)(i), NMFS is required to close the commercial sector for the Other Jacks Complex when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial sector for this complex is projected to reach its ACL by August 4, 2017. Therefore, this temporary rule implements an AM to close the commercial sector for the Other Jacks Complex in the South Atlantic, effective 12:01 a.m., local time, August 4, 2017.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having lesser amberjack, almaco jack, or banded rudderfish on board must have landed and bartered, traded, or sold such species prior to 12:01 a.m., local time, August 4, 2017. During the closure, the recreational bag limit specified in 50 CFR 622.187(b)(8) and the possession limits specified in 50 CFR 622.187(c) apply to all harvest or possession of lesser amberjack, almaco jack, or banded rudderfish in or from the South Atlantic EEZ. These recreational bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of whether such species were harvested in state or Federal waters. During the closure, the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish taken from the EEZ is prohibited.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the fish in the Other Jacks Complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(l)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and public comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for the Other Jacks Complex constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the Other Jacks Complex since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.Comm

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–16378 Filed 7–31–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 148
Thursday, August 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0666; Airspace Docket No. 17–ANM–15]

Proposed Amendment of Class D and Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E surface area airspace, and Class E airspace upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO. The part-time Notice to Airmen (NOTAM) information would be removed from Class E airspace designated as an extension. The geographic coordinates for Pueblo Memorial Airport in the associated Class D and E airspace areas also would be amended to match the FAA's aeronautical database. A biennial review found these changes are necessary to accommodate airspace redesign for the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System. Also, an editorial change would be made to the Class D and Class E airspace legal descriptions replacing ''Airport/Facility Directory'' with the term ''Chart Supplement.''

DATES: Comments must be received on or before September 18, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0666; Airspace Docket No. 17–ANM–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0666/Airspace Docket No. 17–ANM–15''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective

September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO.

Class D airspace and Class E surface area airspace would be reduced to within a 5.1-mile radius (from 5.6 miles) of Pueblo Memorial Airport.

The Class E airspace designated as an extension to a Class D or Class E surface area east of the airport would be modified to a 7.2 mile wide segment (from 7 miles) extending to 11.3 miles (from 11.4 miles) east of the airport; the segment west of the airport would be removed as it is not necessary to support current operations; and a segment would be established north of the airport within 1.6 miles west and 1.3 miles east of the 358° bearing from the airport extending from the 5.1 mile radius to 6.7 miles north of the airport.

Also, this action would eliminate the following language from the legal description of Class E airspace designated as an extension to a Class D or Class E surface area at the airport: ''This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory,'' since the airspace remains in effect full time.

Class E airspace extending upward from 700 feet would be reduced to within a 7.6-mile radius of the Pueblo Memorial Airport with extensions to 12 miles north and 12.3 miles east of the airport (from a 21.8-mile radius with an extension to 28.2 miles east). Also, this action would remove Class E airspace extending upward from 1,200 feet above the surface since the airspace is wholly contained within the Denver Class E en route airspace area and duplication is not necessary.

Additionally, this action would update the geographic coordinates for Pueblo Memorial Airport and replace the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the associated Class D and Class E airspace legal descriptions. This proposed airspace redesign is necessary for the safety and management of IFR operations at the airport.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Pueblo, CO [Amended]

Pueblo Memorial Airport, CO
(Lat. 38°17′24″ N., long. 104°29′53″ W.)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.1-mile radius of Pueblo Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM CO E2 Pueblo, CO [Amended]

Pueblo Memorial Airport, CO
(Lat. 38°17′24″ N., long. 104°29′53″ W.)

That airspace extending upward from the surface within a 5.1-mile radius of Pueblo Memorial Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM CO E4 Pueblo, CO [Amended]

Pueblo Memorial Airport, CO
(Lat. 38°17′24″ N., long. 104°29′53″ W.)

That airspace extending upward from 700 feet above the surface within 3.6 miles each side of the 081° bearing from Pueblo Memorial Airport extending from the 5.1 mile radius of the airport to 11.3 miles east of the airport, and within 1.6 miles west and 1.3 miles east of the 358° bearing from the airport extending from the 5.1 mile radius of the airport to 6.7 miles north of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM CO E5 Pueblo, CO [Amended]

Pueblo Memorial Airport, CO
(Lat. 38°17′24″ N., long. 104°29′53″ W.)

That airspace upward from 700 feet above the surface within a 7.6-mile radius of Pueblo Memorial Airport, and within 2.2 miles west and 1.8 miles east of the 358° bearing from the airport extending to 12 miles north of the airport, and within 3.8 miles each side of the 081° bearing from the airport extending to 12.3 miles east of the airport.

Issued in Seattle, Washington, on July 27, 2017.

Shawn Kozica,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–16283 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0649; Airspace Docket No. 17–ASW–11]

Proposed Establishment of Class E Airspace; Boothville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Boothville, LA. Controlled airspace is necessary to accommodate new special instrument approach procedures developed at Boothville Heliport, for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before September 18, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2017–0649; Airspace Docket No. 17–ASW–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Walter Tweedy (prepared by Ron Laster), Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5802.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending up to and including 700 feet above the surface at Boothville Heliport, Boothville, LA in support of IFR operations at the heliport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0649; Airspace Docket No. 17–ASW–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Boothville Heliport, Boothville, LA, to accommodate new special instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW LA E5 Boothville, LA [New]

Boothville Heliport, LA
(Lat. 29°21′15″ N., long. 89°26′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Boothville Heliport.

Issued in Fort Worth, TX; on July 27, 2017.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2017–16285 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2017–0073, 0074, 0075 and 0076; EPA–HQ–SFUND–1994–0003; FRL–9965–36–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add four sites to the General Superfund section of the NPL and withdraws a previous proposal to list one site on the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before October 2, 2017.

ADDRESSES: Identify the appropriate docket number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Newark South Ground Water Plume	Newark, DE	EPA–HQ–OLEM–2017–0073.
American Creosote DeRidder	DeRidder, LA	EPA–HQ–OLEM–2017–0074.
Mississippi Phosphates Corporation	Pascagoula, MS	EPA–HQ–OLEM–2017–0075.
Eagle Industries	Midwest City, OK	EPA–HQ–OLEM–2017–0076.

Submit your comments, identified by the appropriate docket number, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

To send a comment via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Superfund Docket Center, Mailcode 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Use the Docket Center address below if you are using express mail, commercial delivery, hand delivery or courier. Delivery verification signatures will be available only during regular business hours: EPA Superfund Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004.

For additional docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section''), and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. Plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's Internet site at *https://www.epa.gov/superfund/superfund-remedial-performance-measures#cc_anchor.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#tab-9.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, is available on the EPA's Web site at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. These documents are also available by electronic access at *https://www.regulations.gov* (see instructions in the ''Addresses'' section above).

B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding federal holidays. Please contact the regional dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., William Jefferson Clinton Building West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Cathy Amoroso, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8637.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/947–4250.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to both copy and mail out such maps or scan them and send them out electronically.

You may use the docket at *https://www.regulations.gov* to access

documents in the Headquarters docket (see instructions included in the **ADDRESSES** section). Please note that there are differences between the Headquarters docket and the regional dockets and those differences are outlined in this preamble, Sections II.C and D.

C. What documents are available for public review at the EPA Headquarters docket?

The Headquarters docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record.

D. What documents are available for public review at the EPA regional dockets?

The regional dockets for this proposed rule contain all of the information in the Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

E. How do I submit my comments?

Comments must be submitted to the EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at *https://www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose disclosure is restricted by statute. Once in the public dockets system, select ''search,'' then key in the appropriate docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In this proposed rule, the EPA is proposing to add four sites to the NPL, all to the General Superfund section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
DE	Newark South Ground Water Plume	Newark.
LA	American Creosote DeRidder	DeRidder.
MS	Mississippi Phosphates Corporation	Pascagoula.
OK	Eagle Industries	Midwest City.

B. Withdrawal of Previous Proposal To List a Site on the NPL

The EPA is withdrawing its previous proposal to add the Burlington Northern Livingston Shop Complex site in Livingston, Montana to the NPL because the potentially responsible party, Burlington Northern Santa Fe Railway Company, will complete the remaining actions to investigate and clean up contamination at the facility pursuant to the State of Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and the 1990 Modified Partial Consent Decree and subsequent Statements of Work. The rule proposing to add this site to the NPL can be found at 59 FR 43314 (August 23, 1994). Refer to the Docket ID Number EPA–HQ–SFUND–1994–0003 for supporting documentation regarding this action. Other information regarding this site can be found on the Montana Department of Environmental Quality Web page at *http://deq.mt.gov/Land/statesuperfund/bnlivingston.*

IV. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: July 27, 2017.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2017–16171 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–BG84

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands Management Area; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 48 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) to NMFS for review. If approved, Amendment 48 would revise the Crab FMP to specify how NMFS determines the amount of limited access privileges held and used by groups in the Western Alaska Community Development Quota Program (CDQ Program) for the purposes of managing the excessive share limits under the Crab Rationalization (CR) Program. Amendment 48 is necessary to make the Crab FMP consistent with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens

Act) requirements and NMFS' current method of managing excessive share limits for CDQ groups in the CR Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Crab FMP, and other applicable laws.

DATES: Submit comments on or before October 2, 2017.

ADDRESSES: Submit comments on this document, identified by NOAA–NMFS–2017–0038, by any one of the following methods.

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0038,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for Amendment 48 may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

The Environmental Impact Statement (EIS), RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 48 to the Crab FMP is available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The Council prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The CR Program was implemented on April 1, 2005 (70 FR 10174). The CR Program established a limited access privilege program for nine crab fisheries in the BSAI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch. This annual exclusive harvest privilege is called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the CR Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ; this IFQ is called Class A IFQ. Each year there is a one-to-one match of the pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The CDQ Program was established by the Council and NMFS in 1992, and in 1996, authorization for the Program was incorporated into the Magnuson-Stevens Act. The purpose of the CDQ Program is (1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI, (2) to support economic development in western Alaska, (3) to alleviate poverty and provide economic and social benefits for residents of western Alaska, and (4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

Section 305(i) of the Magnuson-Stevens Act describes the CDQ Program and identifies the villages eligible to participate in the CDQ Program through the six entities specified in Section 305(i)(1)(D) as the CDQ groups (16 U.S.C. 1855(i)). Regulations at 50 CFR 679.2 define the term ''CDQ group'' as an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D). The CDQ Program receives annual apportionments of total allowable catches (TACs) for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the six different CDQ groups. In addition to their allocations under the CDQ Program, CDQ groups participate in the AFA and CR Program fisheries by purchasing QS and PQS or through ownership of vessels or processors that participate in the fisheries. The CDQ groups have purchased both QS and PQS under the CR Program.

Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires the Council and NMFS to establish excessive share limits for limited access privilege (LAP) programs to prevent excessive accumulation of privileges by participants in the LAP programs (16 U.S.C. 1853a(c)(5)(D)). The intent of these limits is to prevent excessive consolidation in the harvesting and processing sectors in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities. Because determination of excessive shares must consider the specific circumstances of each fishery, the Council has implemented different excessive share limits in the LAP programs in Alaska's fisheries, including the CR Program.

The excessive share limit regulations prohibit a person from holding and using more than a specific portion of the LAPs allocated under the CR Program. Under 50 CFR 679.2, ''person'' includes individuals, corporations, partnerships, associations, and other non-individual entities. To monitor holdings and use of LAPs, NMFS determines what portion of a program's harvesting and processing privileges a person holds and uses to ensure that no person holds or uses more privileges than authorized by the excessive share limit established for each LAP.

NMFS determines a person's holding and use of a LAP by summing (1) the amount directly held and used by that person, and (2) the amount held and used by that person indirectly through an ownership interest in or control of another entity that also holds and uses the LAP. Businesses that hold and use LAPs in the CR Program are often composed of multiple owners that have ownership interests in multiple fishing businesses. In cases where a LAP is held by a business entity with more than one owner, NMFS applies the excessive share limits (also called holding and use limits or caps) to each entity that has an

ownership interest in or control of the LAP to monitor whether those entities each exceed the established caps. Ownership attribution refers to the method NMFS uses to assess the relationships between different entities that participate in LAP programs.

NMFS uses two ownership attribution methods to assess these relationships. The two methods for attribution are the ''individual and collective'' rule and the ''10-percent rule.'' Under the individual and collective rule, a person is attributed holding or use of LAPs proportionally to their ownership in or control of other entities that hold or use LAPs. For example, if Company A owns or controls 15 percent of Company B that holds LAPs, Company A would be attributed 15 percent of the holding or use of those LAPs. In contrast, under the 10-percent rule, a person is attributed 100 percent of an entity's LAPs if that person owns or otherwise controls ten percent or more of that entity. Thus, if Company A owns or controls 10 percent or more of Company B, then all of Company B's holdings of LAPs are attributed to Company A. The individual and collective rule is less restrictive than the 10-percent rule because a person is only attributed holding or use in proportion to how much that person owns or controls of other entities, rather than attributing 100 percent of the other entity's LAP holdings once the 10-percent threshold is met.

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the CR Program EIS. To address this concern, the CR Program includes limits on the amount of QS and PQS that a person can hold and the amount of IFQ and IPQ that a person can use. To facilitate the monitoring of these limits, NMFS requires holders of QS and PQS that are non-individual entities to annually submit information on their ownership structure, down to the individual level, and on each owner's percentage holdings in the entity. Holding and use limits for QS and IFQ vary across CR Program fisheries because of different fleet characteristics and the differences in historic dependency of participants on the different crab fisheries. Under 50 CFR 680.42(a)(2), NMFS applies holding and use limits on QS and IFQ using the individual and collective rule for all participants, including CDQ groups, as was recommended by the Council for monitoring harvesting privileges.

For processing privileges, the CR Program limits a person to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the PQS initially issued in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially-issued PQS (50 CFR 680.42(b)). The rationale for holding and use limits is described in the CR Program EIS and the final rule implementing the CR Program (70 FR 10174, 10175; March 2, 2005). Under 50 CFR 680.42(b)(3), NMFS applies holding and use limits on PQS and IPQ using the 10-percent rule, as was recommended by the Council and as was addressed in the preamble to the proposed rule for the CR Program (69 FR 63200, 63219 & 63226; October 29, 2004).

When the CR Program was implemented, NMFS used the 10-percent rule to monitor PQS and IPQ holding and use limits in the CR Program for all program participants, including CDQ groups. In 2006, the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; the Coast Guard Act) revised the Magnuson-Stevens Act to specify that CDQ groups would be subject to excessive share ownership, harvesting, or processing limitations only to the extent of their proportional ownership (16 U.S.C. 1855(i)(1)(F)(i)). Since the 2006 amendment to the Magnuson-Stevens Act, NMFS has used the individual and collective rule for CDQ groups to monitor excessive share limits for CDQ groups in the CR Program. The individual and collective rule allows CDQ groups to hold and use more PQS and IPQ than non-CDQ persons because non-CDQ persons will remain subject to the more restrictive ownership attribution method (the 10-percent rule).

Amendment 48 would revise the Crab FMP to make it consistent with NMFS' ownership attribution process for calculating holding and use of PQS and IPQ to monitor excessive share limits for CDQ groups in the CR Program. Amendment 48 would revise Section 2.7.1 under Chapter 11 of the FMP in the *Processing Sector Elements* section of the Crab FMP to specify that PQS and IPQ holding and use caps for CDQ groups are applied using the individual and collective rule, without continuing to use the 10-percent rule for determining whether an entity is included in calculating a CDQ group's holding and use caps. For example, if a CDQ group holds 15 percent of a company that holds or uses PQS or IPQ, Amendment 48 to the Crab FMP would clarify that the CDQ group would be attributed 15 percent of the holding or use of that PQS or IPQ. Amendment 48 would not revise the Crab FMP for the QS and IFQ holding and use limits under the CR Program because NMFS uses the individual and collective rule to monitor QS and IFQ holding and use limits for all program participants, including CDQ groups. NMFS has used the individual and collective rule to determine holding and use of PQS and IPQ by CDQ groups since enactment of the Coast Guard Act; however, NMFS has not revised the Crab FMP to reflect this statutory change or NMFS' current process.

Amendment 48 would benefit CDQ groups and the public by revising the Crab FMP for consistency with the Magnuson-Stevens Act. Amendment 48 would also update the Crab FMP to specify the method NMFS currently uses to determine holding and use of processing privileges by CDQ groups for purposes of monitoring excessive share limits for the CR Program.

Public comments are solicited on proposed Amendment 48 to the Crab FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 48, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 48 to be considered in the approval/disapproval decision on Amendment 48. All comments received by the end of the comment period on Amendment 48, whether specifically directed to the amendment or the proposed rule will be considered in the amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered,comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–16376 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 148
Thursday, August 3, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 31, 2017.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by September 5, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Laboratory Approval Programs

OMB Control Number: 0581–0251

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended, provides analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing or quality standards. Pursuant to this authority, AMS develops and maintains laboratory certification verification and approval programs as needed by the agricultural industry, to support domestic and international marketing of U.S. products. To ensure that a laboratory is capable of accurately performing the specified analyses, it must adhere to certain good laboratory practice and show technical proficiency in the required areas.

Need and Use of the Information: Checklist and forms have been developed that ask the laboratory for information concerning procedures, the physical facility, employees, and their training. The laboratory must also provide Standard Operating Procedures for the analyses and quality assurance. The laboratory certification and approval programs are voluntary, fee for service, and for admission into one of these programs a laboratory must have a client who requires the specific testing. It is necessary to collect and require the laboratory to attest to the performance elements necessary to determine the credibility of the laboratory. To do less would be a disservice to the agricultural community.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 56.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,140.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–16334 Filed 8–2–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 31, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 5, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Unshu Oranges from the Republic of Korea into the Continental United States.

OMB Control Number: 0579–0314.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the regulations governing the importation of citrus fruit to allow fresh Unshu oranges from the Republic of Korea to be imported in the continental United States under certain conditions. As a condition of entry, the oranges have to be prepared for shipping using packinghouse procedures that include culling of damaged or diseased fruit and washing in a water bath and a surface sterilization treatment.

Need and Use of the Information: APHIS requires that some plants or plant products are accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the intensity of the inspection, APHIS conducts when the shipment arrives. Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 36.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–16337 Filed 8–2–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Davy Crockett-Sam Houston Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Davy Crockett-Sam Houston Resource Advisory Committee (RAC) will meet in Ratcliff, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvhAAC.*

DATES: The meeting will be held on August 31, 2017, from 3:00 p.m. to 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Davy Crockett Ranger District, Conference Room, 18551 State Highway 7 East, Kennard, Texas. Participants who would like to attend by teleconference or by video conference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Davy Crockett Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michelle Rowe, RAC Coordinator, by phone at 936–655–2299 extension 224 or via email at *lrowe@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce new members,
2. Elect a chairman, and
3. Review and approve new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 1, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Gerald Lawrence, Jr., Designated Federal Officer, Davy Crockett Ranger District, 18551 State Highway 7 East, Kennard, Texas 75847; by email to *glawrence@fs.fed.us,* or via facsimile to 936–655–2817.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 10, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16302 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee (RAC) will meet in Elkins, West Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcuqAAC.*

DATES: The meeting will be held on August 22, 2017, from 10:00 a.m.–1:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held in the Monongahela National Forest Headquarters Building, First Floor Conference Room, 200 Sycamore Street, Elkins, West Virginia. Participants who would like to attend by teleconference or by video conference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest Headquarters Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Fosbender, RAC Coordinator, by phone at 304–636–1800 extension 169 or via email at *jfosbender@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and discuss Title II project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 16, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julie Fosbender, RAC Coordinator, Monongahela National Forest Headquarters Building, 200 Sycamore Street, Elkins, West Virginia 26241; by email to *jfosbender@fs.fed.us;* or via facsimile to 304–637–0582.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 10, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16308 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron-Manistee Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Huron-Manistee Resource Advisory Committee (RAC) will meet in Mio, Michigan. The RAC is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the RAC is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act.

DATES: The meeting will be held on August 22, 2017, from 6:30 p.m.–9:30 p.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Mio Ranger District, 107 McKinley Road, Mio, Michigan, 48647. Participants who would like to attend by teleconference or by video conference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mio Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Brad Bolton, Designated Federal Officer, by phone at 989–826–3252 or via email at *blbolton@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and adopt meeting minutes from previous meeting,
2. Review processess for recommending and considering Title II projects,
3. Provide project presentations, and
4. Allow for pubic comment.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by August 15, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Brad Bolton, Designated Federal Officer, 107 McKinley Road, Mio, Michigan 48647, by email to *blbolton@fs.fed.us,* or via facsimile to 989–826–6073.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 5, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16305 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno and Madera Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno and Madera Counties Resource Advisory Committee (RAC) will meet in Clovis, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve

collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act.

DATES: The meeting will be held on August 17, 2017, from 6:00 p.m. to 8:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Sierra National Forest (NF) Supervisor's Office, 1600 Tollhouse Road, Clovis, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sierra NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Roberts, RAC Coordinator, by phone at 559–297–0706 or via email at *jaroberts@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss and agree on general operating procedures,
2. Elect a chair,
3. Review project proposals, and
4. Possibly vote to recommend project proposals for Title II Funds.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 4, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Julie Roberts, RAC Coordinator, Sierra NF Supervisor's Office, 1600 Tollhouse Road, Clovis, California 93611; by email to *jaroberts@fs.fed,* or via facsimile to 559–294–4809.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 10, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16303 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee (RAC) will meet in Elkins, West Virginia. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcuqAAC.*

DATES: The meeting will be held on September 7, 2017, from 1:00 p.m.–4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held in the Monongahela National Forest Headquarters Building, First Floor Conference Room, 200 Sycamore Street, Elkins, West Virginia. Participants who would like to attend by teleconference or by video conference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest Headquarters Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Fosbender, RAC Coordinator, by phone at 304–636–1800 extension 169 or via email at *jfosbender@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and discuss Title II project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 1, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julie Fosbender, RAC Coordinator, Monongahela National Forest Headquarters Building, 200 Sycamore Street, Elkins, West Virginia 26241; by email to *jfosbender@fs.fed.us;* or via facsimile to 304–637–0582.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 5, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–16304 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site

AGENCY: Hiawatha National Forest, USDA Forest Service.

ACTION: Notice of proposed new fees and fee increase.

SUMMARY: The Hiawatha National Forest is proposing new camping fees for the Grand Island National Recreation Area.

The following sites are included in the new fee proposal: Channel Marker, Loon Call, Bermuda, Little Dune 1, Little Dune 2, Little Duck, and Driftwood campsites would be $10.00 per night. Gamefence, Hardwood, Hemlock, and Duck Lake campsites would be $8.00 per night. The proposed fee for Murray Bay and Juniper Flats Group Sites would be $30.00 per night. Fees are being proposed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment of each site. Fees are necessary to ensure continued operation, maintenance, and improvements of these facilities. Final fee adjustments will be determined based upon further analysis and public comment.

DATES: Comments will be accepted through September 1st, 2017. New fees would begin May 2018.

ADDRESS: Cid Morgan, Forest Supervisor, Hiawatha National Forest, 820 Rains Drive Gladstone, Michigan 49837.

FOR FURTHER INFORMATION CONTACT: Paul Holeva, Program Manager Recreation and Lands, 906–428–5889. Information about the proposed fee changes can be also found on the Hiawatha National Forest Web site: *https://www.fs.usda.gov/hiawatha.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directs the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by the Recreation Resource Advisory Committee prior to final decision and implementation.

Grand Island National Recreation Area is a 13,500 acre island located in Lake Superior about .25 miles from the mainland. All campsites included in this proposal are located on the southern half of Grand Island National Recreation Area and are accessible to the public via ferry service or private boat. Campsites are currently opened seasonally and provide a limited variety of amenities. Revenue generated by the proposed fee increases would be used to leverage federal funding, grants, and partnership contributions to make the following investments and improvements: Initiate trash service at boat access points; installation of bear-proof trash receptacles; upgrade picnic tables, grills, and fire rings; provide better signage; new heritage programs and interpretation materials; implementation of new permit system for better reservation tracking, and potentially a more environmentally sustainable recreation infrastructure, such as hammock stands, etc.

Dated: July 10, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System .

[FR Doc. 2017–16310 Filed 8–2–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Announcement of Requirements and Registration for U.S. Department of Agriculture (USDA) Innovations in Food and Agricultural Science and Technology (I–FAST) Prize Competition

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is announcing the I–FAST prize competition (the ''I–FAST Competition'' or the ''Competition'') to develop and implement the Innovations in Food and Agricultural Science and Technology (I–FAST) Program. USDA NIFA will partner with the National Science Foundation (NSF) Innovation Corps (I-Corps) to provide entrepreneurship training to USDA NIFA grantees under this I–FAST pilot program. The goals are to identify valuable product opportunities that can emerge from NIFA supported academic research. Selected USDA NIFA I–FAST project teams will have the opportunity to concurrently participate in the educational programs with NSF I-Corps awardees. Over a period of six months the USDA NIFA supported teams in the I–FAST program will learn what it will take to achieve an economic impact with their particular innovation. The final goal of the I–FAST Competition is to facilitate technology transfer of innovations that can make an impact in the marketplace and the global economy.

DATES: Competition Submission Period—Pre-Application and Evaluation Interviews:

Pre-Application Open Period: August 3, 2017 to September 8, 2017.

Pre-Application Evaluation and Interviews: September 11, 2017 to September 14, 2017.

Full Application Open Period: September 15, 2017 to October 6, 2017.

Final Evaluation and Judging—Full Application: October 9, 2017 to October 11, 2017.

Verification of Winners: October 13, 2017.

Announcement of Winner(s): October 17, 2017.

NSF I-Corps Training for Winner(s): Winning team(s) will need to be available to travel to and attend one of the following NSF I-Corps training sessions with the following dates and locations:

Winter 2018 COHORTS:

Winter Cohort #1: Location TBD (Likely DC metro area).

- *Kickoff (on-site):* January (arrive 16) 17–19.
- *Web sessions (online):* Thursdays 1–4 p.m. ET—January 25, February 1, 8, 15, 22.

Lessons Learned (on-site): March 1–2.

Winter Cohort #2: Location TBD (Likely Atlanta metro area).

- *Kickoff (on-site):* January (arrive 21) 22–24.
- *Web sessions (online):* Mondays 1–4 p.m. ET—January 29, February 5, 12, 19, 26.

Lessons Learned (on-site): March 5–6.

The Pre-Application Phase Competition Submission Period begins August 3, 2017 at 10:00 a.m. ET and ends September 8, 2017 at 12:00 a.m. ET. USDA NIFA's receiving computer set to Eastern Time is the official time keeping device for the Competition.

Pre-Application Interviews will take place September 11, 2017 to September 14, 2017.

The Full-Application Phase Competition Submission Period begins September 15, 2017 at 10:00 a.m. ET and ends October 6, 2017 at 12:00 a.m. ET. USDA NIFA's receiving computer set to Eastern Time is the official timekeeping device for the Competition.

Competition dates are subject to change. Entries submitted before or after the Competition Submission Period will not be reviewed or considered for award. For more details, please visit the *www.challenge.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Changes or updates to the Competition rules will be posted and can be viewed at *https://nifa.usda.gov/program/innovations-food-and-agricultural-science-and-technology-i-fast-prize-competition.* Questions about the Competition can be directed to Scott Dockum at *sdockum@nifa.usda.gov,* or phone 202–720–6346.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The USDA National Institute of Food and Agriculture (NIFA) mission is to

invest in and advance agricultural research, education, and extension to solve societal challenges. As part of this mission NIFA is charged with providing grant funding for research, education, and extension that address key problems of national, regional, and multi-state importance in sustaining all components of agriculture. A majority of NIFA grant funding is provided to academic institutions to focus on developing research in the areas of farm efficiency and profitability, ranching, renewable energy, forestry (both urban and agroforestry), aquaculture, rural communities and entrepreneurship, human nutrition, food safety, biotechnology, and conventional breeding.

USDA NIFA will partner with the NSF Innovation Corps (I-Corps) who will provide an Entrepreneurial Immersion course and training to USDA NIFA grantees through this I–FAST Competition. The goals of this Competition are to spur translation of fundamental research to the market place, to encourage collaboration between academia and industry, and to train NIFA-funded faculty, students and other researchers to understand innovation and entrepreneurship.

The purpose of the I–FAST Competition is to identify NIFA-funded research teams who will receive additional support, in the form of mentoring, training, and funding to accelerate the translation of knowledge derived from fundamental research into emerging products and services that can attract subsequent third-party funding. NIFA-funded research teams will be required to participate in Entrepreneurial Immersion courses provided by the NSF I-Corps program. Each team that receives an I–FAST award is required to participate in the following NSF I–CORP activities: (1) Attendance by the entire team at an on-site three-day NSF I–CORP Entrepreneurial Immersion course; (2) Mandatory participation in the I–CORPs weekly Webinars following the in-person three day on-site meeting; (3) Completion of approximately 15 hours of preparation per week over the duration of the program; (4) Attendance of a two day lessons learned in-person meeting at the end of the training. During the training, teams are expected to engage in at least 100 contacts with potential customers and provide a 5-page summary report back to USDA NIFA on the outcome of the training and milestones to be met by the team (*i.e.,* commercialization, market proposition, and lessons learned from the program). The major focus of I–FAST is for the selected teams (an I–FAST team includes the Principal Investigator (PI), the Entrepreneurial Lead, and the Mentor) to participate in an Entrepreneurial Immersion course provided by the NSF I-Corps program. The NSF I-Corps is a program specifically designed to broaden the impact of select, basic research projects by preparing scientists and engineers to focus beyond the laboratory. Leveraging experience and guidance from established entrepreneurs and a targeted curriculum within the NSF I-Corp program, USDA I–FAST teams will learn to identify valuable product opportunities that can emerge from USDA NIFA supported academic research. The I–FAST Competition will help create a stronger national ecosystem for innovation that couples scientific discovery with technology development to address agricultural and societal needs.

Eligibility Rules for Participating in the Competition

The I–FAST Competition is open to teams (''Teams'' or ''Participants'') that are made up of individuals from academic/university institutions that have received a prior award from NIFA (in a scientific or engineering field relevant to the proposed innovation) that is currently active or that has been active within five years from the closing date of the I–FAST deadline. The lineage of the prior award extends to the PI, Co-PIs, Senior Personnel, Postdoctoral Scholars, Professional Staff, or others who were supported under the NIFA award. The prior award could range from a modest single-investigator award to a large, distributed center and also includes awards involving students.

To be eligible to win a prize under the Competition, Teams:

(1) Shall have registered to participate in the Competition under the rules;

(2) Shall have complied with all the requirements of the Competition rules;

(3) May not include a Federal entity or Federal employee acting within the scope of their employment; and

(4) In the case of a private entity Team member, the member shall be incorporated in and maintain a primary place of business in the United States. In the case of an individual Team member, shall be a citizen or permanent resident of the United States.

Makeup of I–FAST Competition Teams: Each Team shall consist of three members:

(1) Entrepreneurial Lead (EL).

(2) I–FAST Team Mentor.

(3) Principal Investigator (PI).

I–FAST teams are made up of individuals from an academic/university institution except for the Mentor who may reside with an outside organization as described below.

The Entrepreneurial Lead (EL) could be a postdoctoral scholar, graduate, or other student with relevant knowledge of the technology located at the academic/university institution and a deep commitment to investigate the commercial landscape surrounding the innovation. The EL should also be capable and have the will to support the transition of the technology, should the I–FAST Team's project demonstrate the potential for commercial viability. The EL will be responsible for: (1) Developing the team to include the mentor and PI, (2) leading the development of the pre-application, participating in the I–FAST interviews and developing the full application, if selected, (3) starting and completing all training activities in the Entrepreneurial Immersion course provided by the NSF I-Corps program, (4) communicating and coordinating with team members to achieve the goals of the team, (5) developing and monitoring team activity milestones from the Entrepreneurial Immersion course, (6) ensuring the team milestones are completed on time, and (7) ensuring the team is in communication with the NIFA I–FAST Competition Director and the NSF I-Corps Program Director as needed.

The I–FAST Teams Mentor will typically be an experienced or emerging entrepreneur with proximity to the academic/university institution and have experience in transitioning technology out of the academic arena. The Mentor should be selected as a third-party resource, or may be a person that has an established relationship with the team (*e.g.,* Board Member), but cannot be an employee nor directly involved with the technology development. Ideally, the Industry Expert should have prior experience developing and commercializing other products within the broader technology space related to the specific project under development. The EL will need to identify a Mentor that has business expertise in the proposed technology sector and has entrepreneurial experience. A Mentor will be someone with the right ''rolodex'' of contacts in the technology area of commercialization which are critical for ''getting the technology out of the university.'' The EL of the team should contact their University Technology Transfer Office for ideas of potential Mentors. The I–FAST Team's Mentor will be responsible for guiding the team forward using existing entrepreneurial experience and tracking the team's

progress through regular communication with the EL, PI, the NIFA I–FAST competition director, and the NSF I-Corps Program Director, as needed.

The PI will have in-depth knowledge of the innovation developed under the earlier USDA NIFA Grant and will be responsible for: (1) Coordinating with the university on the transfer of prize funds from NIFA, if the team is selected, (2) tracking of the prize funding for team activities, (3) reporting to NIFA on disbursements and obligations of the prize funding, (4) guiding the EL and Mentor on technical aspects of the innovation, (5) communicating as needed with the NIFA I–FAST Competition Director and the NSF I-Corps Program Director, (6) ensuring the EL meets the required milestones for the NSF I–CORP training, and (7) participating as a team member. The Principal Investigator who received the earlier NIFA grant for the technology is allowed to participate on the team, but cannot be the Entrepreneurial Lead.

During the I-Corps course, each participating team, including all its team members, will be required to:

- Attend, in person, an evening reception and 3-day kick-off Entrepreneurial Immersion course;
- Conduct approximately 100 customer interviews over the 6-week program, and submit interview summary reports. This process of customer discovery ''outside the building'' is expected to require a minimum of 15 hours per week for at least five weeks;
- Participate in 5 weekly webinar sessions and submit regular updates to the team's business model canvas. In addition, it is expected that I-Corps teams will take advantage of instructor office hours; and
- Attend, in person, the final 2-day course close out/lessons learned session (to be held in the same region as the kick-off course).

If one or more team members cannot meet these requirements, the team should not pursue the program.

Amount of the Prize

The USDA NIFA I–FAST Competition Prize Purse will be a maximum of $400,000 which will be divided to provide $50,000 each to a maximum of eight (8) Teams. Prize Purse funds are required to be used by winning Teams to fully participate in the NSF I-Corps program curriculum. USDA NIFA reserves the right to award less than the maximum number of available prizes.

Payment of the Prize

Prizes awarded under this Competition will be paid by electronic funds transfer to the academic/university institution the Team(s) represent(s). Prize winners will be required to complete the required financial documents and forms to be supplied by NIFA to set up the electronic transfer. All Federal, state and local taxes are the sole responsibility of the winner(s).

Submission Process for Participants

The Competition will have a three-phase selection process. Initially, Teams will submit a pre-application. From the pre-applications, USDA NIFA will conduct phone interviews. Selected Teams will be invited to submit a full application. From the full applications, USDA NIFA will select the winning Team(s).

Participants will register for the Competition and will submit the pre-application to the Competition via *www.challenge.gov.* Teams can enter the contest by submitting the pre-application through the ''Enter a Submission'' function on Challenge.gov, and then send the pre-application, with name and contact info, to *contest@nifa.usda.gov.* The pre-application shall contain the following information:

Prepare a three-page Executive Summary that describes the following:

(1) Composition of the Team and roles (EL, PI, Mentor) of the members proposing to undertake the commercialization feasibility research.

(2) Point of Contact information for ALL of the members.

(3) Relevant current/previous NIFA award(s) including award number, Title of the Project, and the NIFA program the award was funded under.

(4) Brief description of the potential commercial impact.

(5) Brief description of the current commercialization plans for the innovation.

After the interviews, Teams that are selected to submit a full application will submit it via challenge.gov through the ''Enter a Submission'' function and then send the application with name and contact info to *contest@nifa.usda.gov.* The full application shall include the following project description information:

1. I-Corps Team (One Page Limit)

a. Briefly describe the I-Corps team and provide rationale for its formation, focusing on members' entrepreneurial expertise, relevance to the innovation effort, and members' experience in collaborating on previous projects.

b. Include point of contact information for all team members.

2. Lineage of the Proposed Innovation (One Page Limit)

a. Provide the current/previous NIFA award(s) including award number, Title of Project and the NIFA program the award was funded under.

b. Briefly describe how this research has led the Team to believe that a commercial opportunity exists for the effort moving forward.

3. Description of the Potential Commercial Impact (Two Page Limit)

a. Provide a brief profile of a typical customer of the proposed innovation.

b. Describe the customer need that you believe will be met by the proposed innovation.

c. Describe how the customer currently meets those needs.

d. Your approach—What is the proposed innovation? How does it relate to the fundamental research already conducted under previous award(s)?

e. How much do you think a customer would pay for your solution?

4. Brief Description of the Project Plan (One Page Limit)

a. Current Status—In what stage is the development: Proof-of-principle, proof-of-concept, prototype (alpha, beta), etc . . .

b. Provide a brief description of the proof-of-concept or technology demonstration that will be provided at the end of the project.

The total page limit for the project description full application is five (5) pages.

From the Teams submitting full applications, a maximum of eight Teams will be selected as winners to enter into the I–FAST Program.

Judging

The information on the Competition will be provided via *www.challenges.gov.*

USDA NIFA will screen all entries for eligibility and completeness. Entries from Teams that do not meet the eligibility requirements and/or that fail to include required submission elements will not be evaluated or considered for award. Eligible and complete entries will be judged by a fair and impartial panel of individuals from USDA NIFA and NSF (the ''Judging Panel'').

Pre-Application Evaluation: The Judging Panel will evaluate the pre-application to determine the following:

(1) Did the technology proposed receive past NIFA funding?

(2) Does the team have the required team members and are the roles of each team member clearly described?

(3) Does the commercialization plan provide a good understanding of the team's knowledge of the current state of the art and how the technology could enter into a potential market?

(4) Were the page limits met?

Following the evaluation, the Judging Panel will conduct a phone interview with each selected team. This will emphasize the time commitment and availability of the entire team to complete the NSF I–CORPS program during one of the winter 2018 cohorts.

Full-Application Evaluation: The Judging Panel will evaluate the Full-application to determine the following and approximately equal consideration will be given to each criterion except for item (3), which will receive twice the value of any of the other items:

1. *I–Corps Team:* Does the application clearly describe: The I–Corps team, the rationale for the team's formation, members' entrepreneurial expertise, relevance to the innovation effort, and members' experience in collaborating on previous projects?

2. *Lineage of the Proposed Innovation:* Does the application provide a table of previous NIFA awards and identify the original Principle Investigator (PI)? Does the application clearly describe how this research has led the Team to believe that a commercial opportunity exists for the effort moving forward?

3. *Description of the Potential Commercial Impact:* Does the application clearly describe the profile of a typical customer of the proposed innovation? Does the application describe the customer needs to be met by the proposed innovation? Does the application describe how the customer currently meets those needs? Does the application clearly describe the proposed innovation and how it relates to the fundamental research already conducted under previous award(s)? Does the application describe how much a customer would pay for the solution?

4. *Project Plan:* Does the project plan clearly describe the current status including the stage of development? Does the application provide a description of the proof-of-concept or technology demonstration that will be provided at the end of the project?

5. *Page Limits:* Did the application meet the required page limits?

Additional Rules and Conditions

A. General Conditions

By entering the Competition, each Team guarantees that its entry complies with all applicable Federal and state laws and regulations.

Each Team warrants that its entry is free of viruses, spyware, malware, and any other malicious, harmful, or destructive device. Teams submitting entries containing any such device will be held liable and may be prosecuted to the fullest extent of the law.

Entries containing any matter which, in the sole discretion of USDA NIFA, is indecent, defamatory, in obvious bad taste, demonstrates a lack of respect for public morals or conduct, promotes discrimination in any form, shows unlawful acts being performed, is slanderous or libelous, or adversely affects the reputations of USDA NIFA or NSF will not be accepted. If USDA NIFA, in its sole discretion, finds any entry to be unacceptable, then such entry shall be deemed disqualified and will not be evaluated or considered for award.

The winning Team(s) must comply with all applicable laws and regulations regarding Prize Purse receipt and disbursement.

USDA NIFA's failure to enforce any term of any applicable rule or condition shall not constitute a waiver of that term.

B. Entry Conditions, Release & Liability

By entering the Competition, each Team agrees to:

(1) Comply with and be bound by all applicable rules and conditions, and the decisions of USDA NIFA, which are binding and final in all matters relating to this Competition.

(2) Release and hold harmless USDA NIFA and NSF and all their respective past and present officers, directors, employees, agents, and representatives (collectively the ''Released Parties'') from and against any and all claims, expenses, and liability arising out of or relating to the Team's entry or participation in the Competition and/or the Team's acceptance, use, or misuse of the Prize Purse or recognition. Provided, however, that Participants are not required to waive claims arising out of the unauthorized use or disclosure by USDA NIFA or NSF of the intellectual property, trade secrets, or confidential business information of the Participant.

The Released Parties are not responsible for: (1) Any incorrect or inaccurate information, whether caused by Teams, printing errors, or by any of the equipment or programming associated with or used in the Competition; (2) technical failures of any kind, including, but not limited to, malfunctions, interruptions, or disconnections in phone lines or network hardware or software; (3) unauthorized human intervention in any part of the entry process for the Competition; (4) technical or human error that may occur in the administration of the Competition or the processing of entries; or (5) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from Team's participation in the Competition or receipt or use or misuse of the Prize Purse. If for any reason a Team's entry is confirmed to have been deleted erroneously, lost, or otherwise destroyed or corrupted, that Team's sole remedy is to submit another entry in the Competition.

C. Termination and Disqualification

USDA NIFA reserves the authority to cancel, suspend, and/or modify the Competition, or any part of it, if any fraud, technical failures, or any other factor beyond USDA NIFA's reasonable control impairs the integrity or proper functioning of the Competition, as determined by USDA NIFA in its sole discretion.

USDA NIFA reserves the right to disqualify any Team it believes to be tampering with the entry process or the operation of the Competition or to be acting in violation of any applicable rule or condition.

Any attempt by any person to undermine the legitimate operation of the Competition may be a violation of criminal and civil law, and, should such an attempt be made, USDA NIFA reserves the authority to seek damages from any such person to the fullest extent permitted by law.

D. Verification of Potential Winner(s)

All potential Competition winners are subject to verification by USDA NIFA whose decisions are final and binding in all matters related to the Competition.

Potential winner(s) must continue to comply with all terms and conditions of the Competition rules, and winning is contingent upon fulfilling all requirements. The potential winner(s) will be notified by email and/or telephone. If a potential winner cannot be contacted, or if the notification is returned as undeliverable, the potential winner forfeits. In the event that a potential winner, or an announced winner, is found to be ineligible or is disqualified for any reason, USDA NIFA may make award, instead, to the next runner up, as previously determined by the Judging Panel.

Prior to awarding the Prize Purse, USDA NIFA will verify that the potential winner(s) is/are not suspended, debarred, or otherwise excluded from doing business with the

U.S. Federal Government. Suspended, debarred, or otherwise excluded parties will not be eligible to win the Competition.

E. Intellectual Property

By entering the Competition, each Team warrants that it is the author and/or authorized owner of its entry, and that the entry is wholly original with the Team (or is an improved version of an existing project plan the Team is legally authorized to enter into the Competition), and that the submitted entry does not infringe on any copyright, patent, or any other rights of any third party. Each Team agrees to hold the Released Parties harmless for any infringement of copyright, trademark, patent, and/or other real or intellectual property right that may be caused, directly or indirectly, in whole or in part, from that Team's participation in the Competition.

All legal rights in any materials produced or submitted in entering the Competition are retained by the Team and/or the legal holder of those rights. Entry into the Competition constitutes express authorization for USDA NIFA, NSF, and the Judging Panel to review and analyze any and all aspects of submitted entries, including any trade secret or proprietary information contained in or evident from review of the submitted entries.

F. Privacy & Disclosure Under FOIA

Personal and contact information is not collected for commercial or marketing purposes. Information submitted throughout the Competition will be used only to communicate with Teams regarding entries and/or the Competition.

Teams' entries to the Competition may be subject to disclosure under the Freedom of Information Act (''FOIA''). If a Team believes that all or part of its Competition entry is protected from release under FOIA (*e.g.,* if the information falls under FOIA exemption #4 for ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'') the Team will be responsible for clearly marking the page(s)/section(s) of information it believes are protected.

Authority: 15 U.S.C. 3719.

Done at Washington, DC, this 27th day of July, 2017.

Kim L. Hicks,

Branch Chief, Grants and Agreements Management Branch USDA, Agricultural Research Service, Financial Management and Agreements Division.

[FR Doc. 2017–16342 Filed 8–2–17; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2015, through June 30, 2016. This review covers the respondent Nan Ya Plastics Corporation (Nan Ya), a producer and exporter of PET Film from Taiwan. The Department preliminarily determines that sales of subject merchandise have been made below normal value (NV) by Nan Ya during the POR. In addition, we are rescinding this administrative review with respect to Shinkong Materials Technology Corporation (SMTC). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Myrna Lobo at (202) 482–5255 and (202) 482–2371, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is PET Film. The PET Film subject to the order is currently classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States.[1]

Partial Rescission of Administrative Review

On September 12, 2016, the Department published a notice of initiation of administrative review of the antidumping duty order on PET Film from Taiwan.[2] On December 12, 2016, the petitioners[3] withdrew their request for review with respect to SMTC.[4] In response to this timely filed request and since no other party requested a review of SMTC, we are rescinding this administrative review, in part, with respect to SMTC, pursuant to 19 CFR 351.213(d)(1).

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] A full description of the scope of the order is contained in the memorandum from James Maeder, Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan; 2015–2016'' (Preliminary Decision Memorandum), which is hereby adopted by this notice.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016).

[3] The petitioners in this investigation are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (the petitioners).

[4] *See* Petitioners Letter ''Partial Withdrawal of Request for Antidumping Duty Administrative Review,'' dated December 12, 2016.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period July 1, 2015, through June 30, 2016.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Nan Ya Plastics Corporation	1.34

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[5] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS.[9] In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Daylight Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[10] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(ii).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.310(c).

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). If Nan Ya's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Consistent with the Department's ''automatic assessment'' regulation for entries this clarification will apply to entries of subject merchandise during the POR produced by Nan Ya for which it did not know that its merchandise was destined for the United States.[11] Furthermore, for SMTC for which this review is rescinded, we will instruct CBP to assess antidumping duties at rates equal to the cash deposit 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).

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters is 2.40 percent.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: July 28, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Partial Rescission
4. Scope of the Order
5. Preliminary Finding of No Shipments for SMTC
6. Comparisons to Normal Value
7. Product Comparisons
8. Date of Sale
9. Export Price
10. Normal Value
11. Currency Conversion

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). *See also Brass Sheet and Strip From Germany: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014,* 80 FR 61369 (October 13, 2015).

[12] *See PET Film from Taiwan Amended Final Determination.*

12. Recommendation

[FR Doc. 2017–16351 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2015

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India for the period of review (POR) January 1, 2015, through December 31, 2015. We preliminarily determine that Jindal Poly Films Limited of India (Jindal) and SRF Limited (SRF) received countervailable subsidies during the POR. *See* the ''Preliminary Results of Review'' section, below. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197.

SUPPLEMENTARY INFORMATION:

Partial Rescission of Administrative Review

The Department initiated a review of ten companies in this segment of the proceeding.[1] In response to timely filed withdrawal requests, we are rescinding this administrative review with respect to Ester, Garware, Jindal Poly Films Ltd. (India), MTZ, Polyplex, Uflex Ltd., Vacmet, and Vacmet India Limited, pursuant to 19 CFR 351.213(d)(1). The remaining companies subject to the instant review are Jindal and SRF, which the Department has selected as the mandatory respondents.[2]

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[3] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, dated concurrently with, and hereby adopted by, this notice. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine the total estimated net countervailable subsidy rates for the period January 1, 2015, through December 31, 2015 to be:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Jindal Poly Films Limited of India	5.26
SRF Limited	5.79

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[4] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[5] Rebuttal briefs must be limited to issues raised in the case briefs.[6] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[10] All briefs and hearing requests must be filed electronically and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720, 62727 (September 12, 2016). The ten companies were Ester, Garware, Jindal, Jindal Poly Films Ltd. (India), MTZ, Polyplex, SRF, Uflex Ltd., Vacmet, and Vacmet India Limited. DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively Petitioners) requested a review for six companies (Ester, Garware, Polyplex, SRF, Jindal, and Vacmet). Polyplex USA requested a review for eight companies (Ester, Garware, Jindal, MTZ, Polyplex, SRF, Uflex Ltd., and Vacmet India Limited). In addition, Jindal Poly Films Ltd. (India) and SRF self-requested an administrative review.

[2] *See* Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India; 2015, dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[6] *See* 19 CFR 351.309(d)(2).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310.

[10] *See* 19 CFR 351.310(c).

received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 28, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Partial Rescission of Administrative Review
4. Scope of the Order
5. Subsidies Valuation Information
6. Analysis of Programs
7. Recommendation

[FR Doc. 2017–16352 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, December 14, 2017, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 1412, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Mail Stop 28018, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics To Be Considered: The agenda for the Thursday, December 14, 2017 CINTAC meeting is as follows:

Closed Session (9:00 a.m.–3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3) as information will be disclosed that would be likely to significantly frustrate implementation of proposed agency actions were it to be disclosed prematurely (5 U.S.C. 552b(c)(9)(B)) and as trade secrets and commercial or financial information obtained from a person and privileged or confidential information will be disclosed. (5 U.S.C. 552b(c)(4)).

Public Session (3:00 p.m.–4:00 p.m.)

2. Public comment period.

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, December 8, 2017 in order to pre-register.

Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 60 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, December 8, 2017. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, U.S. Department of Commerce, Mail Stop 28018, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, December 8, 2017. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: June 22, 2017.

Adam O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2017–16316 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy, covering the period July 1, 2015, through June 30, 2016. This review covers two mandatory respondents, Ghigi 1870 S.p.A. (previously known as Ghigi lndustria Agroalimentare Srl) (Ghigi) and Pasta Zara S.p.A. (Pasta Zara) (collectively Ghigi/Zara), Industria Alimentare Colavita S.p.A. (Indalco) and four non-selected companies. We preliminarily determine that Ghigi/Zara made sales of subject merchandise at less than normal value during the period of review (POR) and Indalco did not. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

Background

On September 12, 2016, the Department published a notice of initiation of an administrative review of the antidumping order on pasta from Italy.[1] On February 27, 2017, the Department rescinded the instant review, in part, with respect to Premiato Pastificio Afeltra S.r.l. (Afeltra), Delverde Industrie Alimentari S.p.A. (Delverde Alimentari), Pastificio Felicetti S.r.L. (Felicetti), Pastificio Labor S.r.L. (Labor), La Fabbrica Della Pasta di Gragnano S.A.S di Antonio Moccia (La Fabbrica), Liguori Pastificio dal 1820 S.p.A. (Liguori), Rustichella d'Abruzzo SpA (Rustichella), and Tamma Industrie Alimentari de Capitanata S.r.L (Tamma) pursuant to the timely withdrawal requests submitted by the respective parties.[2]

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta. The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[3]

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* Preliminary Decision Memorandum dated concurrently with, and hereby adopted by, this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, the Department calculated a weighted-average dumping margin of 16.07 percent for Ghigi/Zara and a *de minimis* margin for Indalco for the period July 1, 2015, through June 30, 2016. Therefore, in accordance with section 735(c)(5)(A) of the Act, the Department assigned the weighted-average dumping margin of 16.07 percent calculated for Ghigi/Zara to the four non-selected companies in these preliminary results, as referenced below.

Producer and/or exporter	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (Zara) (collectively Ghigi/Zara)[4]	16.07
Industria Alimentare Colavita S.p.A. (Indalco)	0.00
GR.A.M.M. S.r.l.	16.07
Pastificio Andalini S.p.A. (Andalini)	16.07
Pastificio Zaffiri S.r.l. (Zaffiri)	16.07
Tesa SrL (Tesa)	16.07

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Indalco or Ghigi/Zara is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

In accordance with the Department's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

[2] *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 82 FR 11903 (February 27, 2017).

[3] For a full description of the scope of the order, *see* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Italy; 2015–2016,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[4] *See* Memorandum titled ''2015–2016 Antidumping Duty Administrative Review of Certain Pasta from Italy: Ghigi and Zara Collapsing Memorandum,'' dated July 31, 2017.

merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the antidumping investigation as modified by the section 129 determination.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[6] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[7] Parties who submit comments are requested to submit: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

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

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[5] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310.

Dated: July 28, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Affiliation and Collapsing
5. Discussion of Methodology
   Date of Sale
   Comparisons to Normal Value
   Product Comparisons
   Determination of Comparison Method
   Results of the Differential Pricing (DP) Analysis
   Export Price (EP)/Constructed Export Price (CEP)
   Normal Value
   A. Home Market Viability
   B. Level of Trade
   C. Sales to Affiliated Customers
   D. Cost of Production Analysis
   1. Calculation of Cost of Production
   2. Test of Home Market Prices
   3. Results of the COP Test
   E. Calculation of Normal Value Based on Comparison Market Prices
   F. Price-to-CV Comparison
   G. Constructed Value
   Margins for Companies Not Selected for Individual Examination
   Currency Conversion
6. Recommendation

[FR Doc. 2017–16349 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, October 12, 2017, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 1412, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy &

Environmental Industries, International Trade Administration, Mail Stop 28018, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics To Be Considered: The agenda for the Thursday, October 12, 2017 CINTAC meeting is as follows:

Closed Session (9:00 a.m.–3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3) as information will be disclosed that would be likely to significantly frustrate implementation of proposed agency actions were it to be disclosed prematurely (5 U.S.C. 552b(c)(9)(B)) and as trade secrets and commercial or financial information obtained from a person and privileged or confidential information will be disclosed. (5 U.S.C. 552b(c)(4)).

Public Session (3:00 p.m.–4:00 p.m.)

2. Public comment period

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EDT on Friday, October 6, 2017 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 60 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, October 6, 2017. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, U.S. Department of Commerce, Mail Stop 28018, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, October 6, 2017. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: June 22, 2017.

Adam O'Malley

Director, Office of Energy and Environmental Industries.

[FR Doc. 2017–16312 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF588

Fisheries of the Gulf of Mexico and Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 54 assessment webinar IV for Highly Migratory Species (HMS) Sandbar shark.

SUMMARY: The SEDAR 54 assessment of the HMS Sandbar will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 54 assessment webinar IV will be held from 2 p.m. to 4 p.m. Eastern Standard Time on August 23, 2017.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from

the Data Webinar, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each webinar.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–16362 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF552

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 8, 2017 beginning at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; phone: (401) 861–8000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will review recent stock assessment information from the U.S./Canada Transboundary Resource Assessment Committee and information provided by the Council's Groundfish Plan Development Team (PDT) and recommend the overfishing level (OFL) and acceptable biological catch (ABC) for Georges Bank yellowtail flounder for the 2018 fishing year. They will receive an update and/or recommendations from the SSC's working group on defining ''substantial change'' in status or overfishing of stocks when developing OFL and ABC recommendations. They will also receive an update on a planned review of operational assessments for other groundfish stocks. Also on the agenda will be to review information provided by the Council's Skate PDT and recommend the OFL and ABC for the northeast skate complex for fishing years 2018–2019. Other business will be discussed as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–16363 Filed 8–2–17; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Thursday, August 10, 2017.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2017–16432 Filed 8–1–17; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to VICIS, Inc.; Seattle, WA

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to VICIS, Inc.; a corporation having its principle place of business at 570 Mercer St., Seattle, WA 98109, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to U.S. Army Research Laboratory Technology Transfer and Outreach Office, RDRL–DPT/Thomas Mulkern, Building 321 Room 110, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Thomas Mulkern, (410) 278–0889, Email: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant

an exclusive license to VICIS, Inc. in the field of use related to Helmet Chinstraps Incorporating Rate-Actuated Tethers for Football, Lacrosse and Hockey relative to the following—

• ''Rate-Responsive, Stretchable Devices'', U.S. Patent No.: 9,303,717, Filing Date June 26, 2013, Issue Date April 5, 2016.

• ''Rate-Responsive, Stretchable Devices (Further Improvements)'', U.S. Patent Application No.: 15/057,944, Filing Date March 1, 2016.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–16345 Filed 8–2–17; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2017–HQ–0002]

Submission for OMB Review; Comment Request

ACTION: 30-Day information collection 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 September 5, 2017.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Law Enforcement Officers Safety Act (LEOSA); Department of the Navy Law Enforcement Officers Safety Act Credential Application (LEOSA); OMB Control Number 0703–XXXX.

Type of Request: New Collection.

Number of Respondents: 900.

Responses per Respondent: 1.

Annual Responses: 900.

Average Burden per Response: .05 hrs.

Annual Burden Hours: 450.

Needs and Uses: To verify eligibility of current DON Law enforcement officers for assigned duties and to determine if reassignment, reclassification, detail or other administrative action is warranted based on an officer's ability to obtain or maintain credential qualification requirements. To verify and validate eligibility of current, separating or separated and retired DON law enforcement officers to ship, transport, possess or receive Government-issued or private firearms or ammunition.

To verify and validate eligibility of current, separating or separated, and retired DON law enforcement officers to receive DON endorsed law enforcement credentials, to include LEOSA credentials. The information is captured for administrative, mission support and law enforcement/legal use; if required. The information collected allows the Department of the Navy to effectively and efficiently process, validate, issue and track LEOSA applications and issuances.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

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: July 31, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–16326 Filed 8–2–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Final Environmental Impact Statement for the Proposed Mountaineer Xpress and Gulf Xpress Projects

Columbia Gas Transmission, LLC ..... Docket No. CP16–357–000.
Columbia Gulf Transmission, LLC ..... Docket No. CP16–361–000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Mountaineer XPress Project (MXP), proposed by Columbia Gas Transmission, LLC (Columbia Gas), and the Gulf XPress Project (GXP), proposed by Columbia Gulf Transmission, LLC (Columbia Gulf), in the above-referenced dockets. Columbia Gas requests authorization to construct and operate a total of 170.9 miles of natural gas transmission pipeline and ancillary facilities in West Virginia, and to modify one existing, one approved, and one pending compressor station. The MXP would provide about 2,700,000 dekatherms per day (Dth/d) of available capacity for transport to Columbia Gas' TCO Pool [1] for delivery to markets

[1] The TCO Pool is the main natural gas pooling point for gas pricing and trading on Columbia Gas' system. Shippers may make deliveries into the TCO

across Columbia Pipeline Group's system, including the Columbia Gulf Leach interconnect with Columbia Gulf. Columbia Gulf requests authorization to construct and operate seven new natural gas-fired compressor stations and to upgrade one approved compressor station and one existing meter station in Kentucky, Tennessee, and Mississippi. The GXP would provide about 860,000 Dth/d of natural gas delivery to markets in the Gulf Coast region.

The EIS assesses the potential environmental effects of the construction and operation of the MXP and GXP in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects would result in some adverse and significant environmental impacts. However, if the projects are constructed and operated in accordance with applicable laws and regulations, the mitigation measures discussed in this EIS, and our recommendations, these impacts would be reduced to acceptable levels.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, West Virginia Division of Natural Resources, and West Virginia Department of Environmental Protection participated as cooperating agencies in the preparation of this EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and may participate in the NEPA analysis. The U.S. Army Corps of Engineers would adopt and use the EIS to comply with the requirements of NEPA before issuing permits for the projects under section 404 of the Clean Water Act, which governs the discharge of dredged or fill material into waters of the United States (including wetlands). Although the cooperating agencies provided input to the conclusions and recommendations presented in this EIS, the agencies would present their own conclusions and recommendations in their respective records of decision (where applicable) for the projects.

The EIS addresses the potential environmental effects of the construction and operation in West Virginia of the following MXP facilities:

- About 164.5 miles of new 36-inch-diameter natural gas pipeline extending from Marshall County to Cabell County (MXP–100);
- about 6.0 miles of new 24-inch-diameter natural gas pipeline in Doddridge County (MXP–200);
- three new compressor stations in Doddridge, Calhoun, and Jackson Counties (one that also includes a new regulator station);
- two new regulating stations in Jackson and Cabell Counties;
- about 296 feet of new, 10-inch-diameter natural gas pipeline at the Ripley Regulator Station to tie Columbia Gas' existing X59M1 pipeline into the MXP–100 pipeline in Jackson County;
- an approximately 0.4-mile-long replacement segment of 30-inch-diameter natural gas pipeline in Cabell County; and
- upgrades to one existing compressor station (Wayne County) and two compressor stations (Marshall and Kanawha Counties) that are approved or pending, respectively, under separate FERC proceedings.

The EIS also addresses the potential environmental effects of the construction and operation of the following GXP facilities:

- Seven new compressor stations in Kentucky (Rowan, Garrard, and Metcalfe Counties), Tennessee (Davidson and Wayne Counties), and Mississippi (Union and Granada Counties);
- upgrades to one approved compressor station in Carter County, Kentucky; and
- upgrades at one existing meter station in Boyd County, Kentucky.

The FERC staff mailed copies of the EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project areas. Paper copies of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search, and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP16–357 and CP16–361). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 28, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–16346 Filed 8–2–17; 8:45 am]

BILLING CODE 6717–01–P

Pool from any source of delivery into Columbia Gas' system.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–257–000]

WBI Energy Transmission Inc.; Notice of Schedule for Environmental Review of the Valley Expansion Project

On April 26, 2017, WBI Energy Transmission Inc. (WBI Energy) filed an application in Docket No. CP17–257–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Valley Expansion Project (Project), and would provide an additional 40 million cubic feet per day of firm transportation on its system.

On May 9, 2017, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—September 20, 2017
90-day Federal Authorization Decision Deadline—December 19, 2017.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

WBI Energy proposes to construct a new 2,600-horsepower electric-driven compressor station in Cass County, North Dakota; 38 miles of new 16-inch-diameter pipeline between Mapleton, North Dakota and Felton, Minnesota; and farm taps, valve settings, and ancillary facilities. Additionally, WBI Energy proposes to replace two existing town border station delivery points and construct one regulator station in Burleigh, Stutsman, and Barnes Counties, North Dakota, respectively, to increase the operating pressure of a portion of its Line Section 24.

Background

On November 23, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Valley Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF16–10 and was sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, commenters raised concerns regarding: watershed and waterbody crossings; stormwater discharge; groundwater impacts; flood zone impacts; reseeding and species review requirements; Section 106 consultation; cultural resources and land valuation impacts; route variations; project impacts on the Fargo-Moorhead Area Diversion Project; and fugitive dust emissions and noise impacts.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–257), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: July 28, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–16347 Filed 8–2–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3267–016]

Chasm Hydro, Inc.; ECOsponsible, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On July 10, 2017, Chasm Hydro, Inc. (transferor) and ECOsponsible, LLC (transferee) filed an application for the transfer of license for the Ballard Mill Project No. 3267, from the transferor to the transferee. The project is located on the Salmon River in Franklin County, New York. The project does not occupy Federal lands.

The applicants seek Commission approval to transfer the license for the Ballard Mills Project from the transferor to the transferee.

Applicant's Contacts: For Transferor: Mr. John Dowd, President, Chasm Hydro, Inc., P.O. Box 265, Chateaugay, NY 12920.

For Transferee: Mr. Dennis Ryan, Manager, ECOsponsible, LLC, P.O. Box 114, West Falls, NY 14170.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–3267–016.

Dated: July 28, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–16350 Filed 8–2–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0713; FRL–9965–53]

Nominations to the Augmented Science Advisory Committee on Chemicals (SACC); Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides the names and affiliations of additional candidates currently under consideration for appointment to the Science Advisory Committee on Chemicals (SACC). The purpose of the SACC is to provide independent advice and expert consultation at the request of the EPA Administrator with respect to the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches. After further consideration of the objectives and scope of SACC activities, EPA is considering additional candidates for SACC membership from the August 26, 2016 **Federal Register** notice pool of requested nominees. These additional candidates are named in this notice. The Agency is also considering the 29 candidates for membership previously identified in the December 9, 2016 **Federal Register** notice. Comments that were previously received on the 29 candidates will also be considered. The Agency, at this time, anticipates selecting approximately six additional SACC members with specific expertise and perspectives representing industry, labor, animal protection, government, public health, and public interest groups. Public comments on the candidates are invited as they will be used to assist the Agency in selecting the additional chartered committee members.

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

ADDRESSES: Submit your comments, identified by Docket Identification (ID) Number EPA–HQ–OPPT–2016–0713, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: Tamue Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7642; email address: *gibson.tamue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to those involved in the manufacture, processing, distribution, disposal, and/or have other interests in the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority?

This committee is established under FACA, 5 U.S.C. Appendix 2, and pursuant to the Frank R. Lautenberg Chemical Safety for the 21st Century Act, 2016.

II. Background

The SACC was established under FACA section 9(a), and pursuant to section 2526(o) of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA), to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches. On January 17, 2017, the EPA Administrator appointed 18 expert members from diverse backgrounds, professional experiences, and perspectives that would contribute to the breadth and balance of scientific viewpoints on the committee. These members have expertise and perspectives representing government, labor, public health, public interest, animal protection, industry, and other groups.

EPA has decided to increase the membership of the SACC to approximately 24 members to better address the objectives and scope of activities for the committee. These members will serve as Special Government Employees (SGEs) or Regular Government Employees (RGEs).

The purpose of the SACC is to provide independent advice and expert consultation at the request of the EPA Administrator with respect to the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches. After further consideration of the objectives and scope of SACC activities, EPA is considering additional candidates for SACC membership from the August 26, 2016 **Federal Register** notice pool of requested nominees (81 FR 58925) (FRL–9950–66). These additional candidates are named in this notice. The Agency is also considering the 29 candidates for membership previously identified in the December 9, 2016 **Federal Register** notice (Docket ID Number: EPA–OPPT–2016–0713; (81 FR 89092) (FRL–9956–17)). The written comment period for this announcement closed on January 9, 2017. The Agency, at this time, anticipates selecting approximately six additional SACC members with specific expertise and perspectives representing industry, labor, animal protection, government, public health, and public interest groups. Public comments on the candidates are invited as they will be used to assist the Agency in selecting the additional chartered committee members.

III. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches. No persons shall be ineligible to serve on the Committee by reason of their membership on any other advisory committee to a Federal department or agency, or their employment by a Federal department or agency (except the EPA). The Administrator appoints individuals to serve on the Committee for staggered terms of 1 to 3 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

IV. Applicability of Existing Regulations

EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will also apply to the members of the SACC. These regulations appear in 40 CFR part 3, subpart F.

V. Process of Obtaining Nominees

On August 26, 2016, EPA published a **Federal Register** notice (81 FR 58925) (FRL–9950–66) providing notice of intent to establish the SACC, describing its purpose, and announcing the opportunity for the public to provide nominations for the Agency's consideration. The nomination period was open for 45 days and ended on October 11, 2016. In response, the Agency received approximately 100 nominees.

EPA considered the following criteria to select candidates from these nominations: Interest and availability to participate in committee meetings, absence of financial conflicts of interest, absence of the appearance of a loss of impartiality, scientific expertise, and backgrounds and experiences that would contribute to the diversity of scientific viewpoints on the committee, including professional experiences in government, labor, public health, public interest, animal protection, industry, or other groups.

Based on these criteria, EPA has identified 64 additional candidates for further consideration for membership on the SACC. EPA will also further consider the 29 candidates identified in the December 9, 2016 **Federal Register** Notice, as well as the public comments that were previously received on the 29 candidates. The following are the names (listed alphabetically, last name first) and professional affiliations of the 64 additional candidates. Brief biographical sketches for these candidates are posted on the EPA Web

site at *https://www.epa.gov/tsca-peer-review.*

1. Allen, David, Ph.D., Vice President, Science and Strategy, Integrated Laboratory Systems, Inc., Raleigh, NC.
2. Barton, Charles, Ph.D., Manager, Toxicology and Risk Assessment, Valspar Corporation, Sesickley, PA.
3. Becker, Richard, Ph.D., Senior Toxicologist, American Chemical Council, Washington, DC.
4. Belcher, Scott, Ph.D., Research Professor, Department of Biological Sciences, North Carolina State University, Raleigh, NC.
5. Bennett, Steven, Ph.D., Senior Director, Scientific Affairs & Sustainability, Consumer Specialty Products Association, Washington, DC.
6. Benvenuto, Mark, Ph.D., Professor and Chair, Chemistry and Biochemistry, University of Detroit-Mercy, Detroit, MI.
7. Blystone, Sheri, Ph.D., Director, Regulatory Affairs & Product Safety, SNF Holding Company.
8. Chui, Weihsueh, Ph.D., Professor, Department of Veterinary Integrative Biosciences, Texas A&M University, College Station, TX.
9. Congleton, Johanna, Ph.D., Senior Scientist/Toxicologist, Environmental Working Group, Washington, DC.
10. Coots, Robert, Ph.D., Manager, R&D, Colonial Chemical, Inc., New Hope, TN.
11. Dempsey, Susan, M.S., Human Health/Ecological Risk Assessor, Nebraska Department of Health and Human Services, Lincoln, NE.
12. Edstrom, Robert, Ph.D., Chief Toxicologist, Minnesota Department of Transportation, Office of Environmental Stewardship, St. Paul, MN.
13. Faustman, Elaine, Ph.D., Professor, Environmental and Occupational Health Sciences, University of Washington, Seattle, WA.
14. Fowle III, John, Ph.D., Principal, Science To Inform, LLC, Pittsboro, NC.
15. Garcia, Kristina, P.G., Environmental Compliance Program Manager, Office of Watershed Protection, Atlanta Department of Watershed Management, Atlanta, GA.
16. Gordon, Terry, Ph.D., Professor, Department of Environmental Medicine, New York University School of Medicine, New York, NY.
17. Hartung, Thomas, Ph.D., Professor, Molecular Microbiology and Immunology, Department of Environmental Health Sciences, Johns Hopkins University, Baltimore, MD.
18. Heiger-Bernays, Wendy, Ph.D., Associate Professor, Department of Environmental Health, School of Public Health, Boston University, Boston, MA.
19. Henderson, Rogene, Ph.D., Senior Scientist (Emeritus), Lovelace Respiratory Research Institute, Albuquerque, NM.
20. Higgs, Megan, Ph.D., Statistician, Neptune and Company, Lakewood, CO.
21. Hollis, Adrienne, Ph.D., JD, Director, Federal Policy, WE ACT For Environmental Justice, Washington, DC.
22. Holsapple, Michael, Ph.D., Director and Endowed Chair, Center for Research on Ingredient Safety, Michigan State University, East Lansing, MI.
23. Jaeger, Calvin, Ph.D., Senior Security Systems Risk Analyst, Sandia National Laboratories (retired), Albuquerque, NM.
24. Janssen, Sarah, MD, Ph.D., Assistant Clinical Professor, Division of Occupational Medicine, University of California-San Francisco, San Francisco, CA.
25. Janus, Erik, M.S., President, M^3 Technical and Regulatory Services, LLC, Shepherdstown, WV.
26. Johnson, Mark, Ph.D., Director of Toxicology, United States Army Public Health Center, Aberdeen Proving Ground, MD.
27. Kester, Janet, Ph.D., Toxicologist, New Fields, Wentzville, MO.
28. Lohmann, Rainer, Ph.D., Professor, Oceanography, Graduate School of Oceanography, University of Rhode Island, Kingston, RI.
29. Luderer, Ulrike, M.D., Ph.D., Professor, Department of Medicine, Division of Occupational and Environmental Medicine, University of California-Irvine, Irvine, CA.
30. Maffini, Maricel, Ph.D., Private Contractor (former Senior Scientist, Health and Environment Program, Natural Resources Defense Council), Washington, DC.
31. Marlborough III, Sidney, Ph.D., Senior Environmental Toxicologist, Noble Energy, Houston, TX.
32. McFadden, Roger, Chief Science and Sustainability Officer, Replenish, LLC, Portland, OR.
33. McLeod, Brittany, Environmental Divisional Manager, Ormantine USA, Palm Bay, FL.
34. McPartland, Jennifer, Ph.D., Senior Scientist, Health Program, Environmental Defense Fund, Washington, DC.
35. Mitchell Mark, M.D., M.P.H., Principal, Mitchell Environmental Health Associates, Hartford, CT.
36. Mitchelmore, Carys, Ph.D., Associate Professor, University of Maryland Center for Environmental Science, College Park, MD.
37. Nelson, William, Ph.D., Branch Chief, Environmental Risk Assessment Branch, United States Army Corps of Engineers, Vicksburg, MS.
38. Nidel, Christopher, Esquire, President, Nidel & Nace, PLLC, Washington, DC.
39. Noce, Anthony, Consultant, Haley & Aldrich, Inc., Burlington, MA.
40. Orlov, Alexander, Ph.D., Associate Professor, Materials Science and Chemical Engineering Department, Stony Brook University, Stony Brook, NY.
41. Pennell, Michael, Ph.D., Associate Professor, Division of Biostatistics, College of Public Health, The Ohio State University, Columbus, OH.
42. Plopper, Charles, Ph.D., Professor Emeritus, Department of Anatomy, Physiology and Cell Biology, University of California-Davis, Davis, CA.
43. Pope, Carey, Ph.D., Professor and Chair in Toxicology, Oklahoma State University, Stillwater, OK.
44. Portier, Christopher, Ph.D., M.S., Private Consultant, Thun, Switzerland.
45. Post, Gloria, Ph.D., Research Scientist, Division of Science, New Jersey Department of Environmental Protection, Trenton, NJ.
46. Rawlins, James, Ph.D., Associate Professor, Polymer Science and Engineering, University of Southern Mississippi, Hattiesburg, MS.
47. Rudel, Ruthann, M.S., Director of Research, Silent Spring Institute, Washington, DC.
48. Singla, Veena, Ph.D., Scientist, Health & Environment Program, Natural Resource and Defense Council, San Francisco, CA.
49. Solomon, Gina, M.D., M.P.H., Deputy Secretary for Science and Health, California Environmental Protection Agency, Sacramento, CA.
50. Stone, Alex, Sc.D., Chemist, Hazardous Waste and Toxics Reduction Program, Washington Department of Ecology, Lacy, WA.
51. Swartzendruber, Philip, Ph.D., Air Quality Scientist, University of Washington, Seattle, Washington.
52. Tickner, Joel, Ph.D., Associate Professor, Department of Community Health and Sustainability, University of Massachusetts-Lowell, Lowell, MA.
53. Trejo, Nidia, M.S., Research Intern, Ithaca Waste Water Treatment Facility, Ithaca, NY.
54. Weiss, Judith, Ph.D., Professor (Emerita), Department of Biological Sciences, Rutgers, New Brunswick, NJ.
55. Wilson, Michael, Ph.D., Director, Occupational and Environmental Health Program, Blue Green Alliance, San Francisco, CA.
56. Wise, John, Ph.D., Professor, Department of Entomology, Michigan State University, East Lansing, MI.
57. Wolf, Martin, M.A., Director, Sustainability and Authenticity, Seventh Generation, Inc., Burlington, VT.
58. Wood-Black, Frankie Kay, Ph.D., Principal, Sophic Pursits, Inc., Ponca, OK.
59. Wright, Robert, M.D., M.P.H., Professor of Pediatrics and Preventive Medicine, Icahn School of Medicine-Mount Sinai, New York, NY.
60. Wylie, Ann, Ph.D., Professor of Geology (Emerita), University of Maryland, College Park, MD.
61. Yoon, MiYoung, Ph.D., Senior Research Investigator, ScitoVation, Research Triangle Park, NC.
62. Zhu, Hao, Ph.D., Associate Professor, The Rutgers Center for Computational and Integrative Biology, Rutgers University, New Brunswick, NJ.
63. Zoeller, Robert Thomas, Ph.D., Professor of Biology, University of Massachusetts- Amherst, Amherst, MA.
64. Zota, Ami, Sc.D., M.S., Assistant Professor, Environmental and Occupational Health, George Washington University, Washington, DC.

Authority: 15 U.S.C. 2625 *et seq.;* 5 U.S.C. Appendix 2 *et seq.*

Dated: July 28, 2017.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–16385 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0011; FRL–9961–84]

Registration Review; Draft Human Health and/or Ecological Risk Assessments for Benfluralin, Bromuconazole, Carbaryl, Clodinafop-propargyl, Deltamethrin, Diflufenzopyr, Esfenvalerate, Lufenuron, and Mepiquat Chloride/Mepiquat Pentaborate; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft risk human health and/or ecological risk assessments for the registration review of benfluralin, bromuconazole, carbaryl, clodinafop-propargyl, deltamethrin, diflufenzopyr, esfenvalerate, lufenuron, and mepiquat chloride/mepiquat pentaborate. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit III. After reviewing comments received during the public comment period, EPA will issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments and may request public input on risk mitigation before completing proposed registration review decisions for the pesticides listed in the Table in Unit III. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before October 2, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0794, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager identified for the pesticide of interest in the Table in Unit III.

For general questions on the registration review program, contact: Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified for the pesticide of interest in the Table in Unit III.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of the pesticides listed in the Table in Unit III pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for the pesticides listed in the Table of this unit to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Pesticide Docket ID No.	Chemical Review Manager,telephone number, email address
Benfluralin, Case 2030	EPA–HQ–OPP–2011–0931	Brian Kettl, *kettl.brian@epa.gov,* (703) 347–0535.
Bromuconazole, Case 7035	EPA–HQ–OPP–2015–0535	Thomas Harty, *harty.thomas@epa.gov,* (703) 347–0338.
Carbaryl, Case 0080	EPA–HQ–OPP–2010–0230	Linsey Walsh, *walsh.linsey@epa.gov,* (703) 347–8030.
Clodinafop-propargyl, Case 7250	EPA–HQ–OPP–2012–0424	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov,* (703) 308–8025.
Deltamethrin, Case 7414	EPA–HQ–OPP–2009–0637	Bilin Basu, *basu.bilin@epa.gov,* (703) 347–0455.
Diflufenzopyr, Case 7246	EPA–HQ–OPP–2011–0911	Bilin Basu, *basu.bilin@epa.gov,* (703) 347–0455.
Esfenvalerate, Case 7406	EPA–HQ–OPP–2009–0301	Marianne Mannix, *mannix.marianne@epa.gov,* (703) 347–0275.
Lufenuron, Case 7627	EPA–HQ–OPP–2015–0098	Bonnie Adler, *adler.bonnie@epa.gov,* (703) 308–8523.
Mepiquat Chloride/Mepiquat Pentaborate, Case 2375.	EPA–HQ–OPP–2012–0083	Caitlin Newcamp, *newcamp.caitlin@epa.gov,* (703) 347–0325.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit III. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health and/or ecological risk assessments. EPA will then issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessments, if the revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing proposed registration review decisions for the pesticides listed in the Table in Unit III.

1. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 11, 2017.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2017–16372 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0618; FRL–9963–97]

Cancellation Order for Certain Pesticide Registrations and/or Amendments To Terminate Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of November 22, 2016, concerning receipt of requests to voluntarily cancel certain pesticide registrations and/or amend registrations to terminate certain uses. EPA also issued a notice in the **Federal Register** of April 10, 2017, concerning cancellation of certain pesticide registrations and/or amendments to terminate uses. This document corrects a typographical error in both of these notices. The EPA registration number for one of the products being voluntarily cancelled was listed incorrectly in the original notices.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; email address: *scheltema.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in both the November 22, 2016 and April 10, 2017 notices a list of those who may be potentially affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0618, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What does this correction do?

The EPA registration number for one of the products being voluntarily cancelled was listed incorrectly in the

original notices as EPA Reg. No. 100–699. The product name was listed correctly. Therefore, FR Doc. 2016–280906 published in the **Federal Register** of November 22, 2016 (81 FR 83833) (FRL–9959–38) is corrected as follows:

1. On page 83834, in Table 1, correct 100–699 to read 100–669.

In addition, FR Doc. 2017–07133 published in the **Federal Register** of April 10, 2017 (82 FR 17253) (FRL–9959–38) is corrected as follows:

1. On page 17254, in Table 1, correct 100–699 to read 100–669.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 7, 2017.

Yu-Ting Guilaran,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2017–16386 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0214; FRL–9965–61]

Revised Dates for Comment Periods for the November 2017 FIFRA Scientific Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides revised dates for the comment periods for written comments and for comments on nominees for *ad hoc* members of the Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel (FIFRA SAP). The 3-day meeting will be held on November 28 to November 30, 2017, from approximately 9 a.m. to 5 p.m., as first announced in the **Federal Register** of June 6, 2017 (82 FR 26097; FRL–9962–79), at which time the SAP will consider and review the Continuing Development of Alternative High-Throughput Screens to Determine Endocrine Disruption, Focusing on Androgen Receptor, Steroidogenesis, and Thyroid Pathways.

Comments

1. FIFRA SAP Documents, Oral and Written Comments, and Listing of Nominees

EPA's background paper, charge/questions to FIFRA SAP, and related supporting materials will be available on or before September 1, 2017. In addition, a list of candidates under consideration as prospective *ad hoc* panelists for this meeting will be available for public comment by August 22, 2017 (see link for nominee listing at: *https://www.epa.gov/sap*).

Written comments: Written comments should be submitted, using the instructions under **ADDRESSES** in Unit I.B., on or before October 16, 2017, to provide FIFRA SAP the necessary time to consider and review the written comments. FIFRA SAP may not fully consider written comments submitted after October 16, 2017.

Oral comments: The Agency encourages each individual or group wishing to make brief oral comments to FIFRA SAP to submit their request to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** on or before November 7, 2017, to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. Oral comments before FIFRA SAP are limited to approximately 5 minutes unless arrangements have been made prior to November 7, 2017. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. In addition, each speaker should bring 15 copies of his or her oral remarks and presentation slides (if required) for distribution to FIFRA SAP at the meeting by the DFO.

FIFRA SAP Nominees: Comments on nominees should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 7, 2017. Your comments will be placed in the public docket by the DFO. You may obtain electronic copies of most meeting documents, including FIFRA SAP composition (*i.e.,* members and *ad hoc* members for this meeting) and the meeting agenda, at *http://www.regulations.gov* and the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap.*

For additional instructions regarding submitting comments, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

2. FIFRA SAP Meeting Minutes

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes and report will be posted on the FIFRA SAP Web site or may be obtained from the OPP Docket at *http://www.regulations.gov.*

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Submit your comments, identified by Docket Identification (ID) Number EPA–HQ–OPP–2017–0214, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Todd Peterson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: *peterson.todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the general public. This action may also be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

C. Tips for Preparing Your Comments

1. When preparing and submitting your comments, see the commenting

tips at *http://www.epa.gov/dockets/comments.html.*

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: July 28, 2017.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–16383 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0350; FRL–9963–80]

Pesticide Maintenance Fee: Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 30, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0350, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Michael Yanchulis.

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

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

FOR FURTHER INFORMATION, CONTACT: Michael Yanchulis, Information Technology and Resources Managment Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 221 pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Chemical name
100–598	100	Profenofos Technical	Profenofos.
100–669	100	Curacron 8E Insecticide-Miticide	Profenofos.
100–1411	100	Enfold Insecticide	Emamectin benzoate.
264–956	264	Gustafson Allegiance-LS Fungicide	Metalaxyl.
264–967	264	Raxil Allegiance MD Fungicide	Metalaxyl, Tebuconazole.
264–993	264	Secure Dry Insecticide	Spinosad.
264–994	264	Secure II Liquid Stored Grain Insecticide	Spinosad.
264–1073	264	Puma Ultra Herbicide	Fenoxaprop-p-ethyl.
264–1132	264	Poncho/GB126	Clothianidin; Bacillus firmus strain I–1582.
264–1176	264	Melocon WP	Purpureocillium lilacinum strain 251.
432–757	432	Tribute II XL Termiticide/insecticide Concentrate	Esfenvalerate.
432–814	432	Deltamethrin 25 SC Concentrate	Deltamethrin.
432–823	432	Delta 920 Dust Insecticide	Deltamethrin.
432–824	432	Delta Granular	Deltamethrin.
432–897	432	Aliette HG Brand Fungicide	Fosetyl-Al.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
432–1252	432	Maxforce Professional Insect Control Ant Killer Bait Stations.	Hydramethylnon.
432–1253	432	Maxforce Roach Control System Formula 18493	Hydramethylnon.
432–1260	432	Maxforce Ant Bait F3	Fipronil.
432–1263	432	Maxforce Ant Bait F2	Fipronil.
432–1265	432	Maxforce IBH11	Hydramethylnon.
432–1301	432	Tempo 20 WP In Water Soluble Packets	Cyfluthrin.
432–1303	432	Tempo 1 Insecticide	beta-Cyfluthrin.
432–1305	432	Tempo 10 WP In Packets	beta-Cyfluthrin.
432–1306	432	Tempo 20 WP Insecticide In Water Soluble Packets.	Cyfluthrin.
432–1313	432	Tempo 2 TC Insecticide	Cyfluthrin.
432–1315	432	Tempo 0.1% Dust Insecticide	Cyfluthrin.
432–1357	432	Tempo Ultra 40 Insecticide	beta-Cyfluthrin.
432–1368	432	Premise Gel Insecticide	Imidacloprid.
464–99	464	Chlorine	Chlorine.
464–8131	464	Aqucar Sump Buddy Pro Water Treatment Microbiocide.	2,2-Dibromo-3-nitrilopropionamide.
498–180	498	Champion Sprayon Disinfectant Formula 4	Isopropyl alcohol; o-Phenylphenol.
498–187	498	Champion Sprayon Ant & Roach Killer 4	Piperonyl butoxide; Permethrin; Tetramethrin.
524–610	524	M1750 Herbicide	Glyphosate ethanolamine salt; Dicamba, diglycolamine salt.
777–105	777	Lysol Brand IV I.C. Disinfectant	Quaternary ammonium compounds; Ethanol.
961–352	961	Lebanon Fertilizer with Surflan	Oryzalin.
961–364	961	Lebanon Fertilizer with Barricade Preemergence Weed Control (0.22%).	Prodiamine.
961–369	961	Lebanon Fertilizer with Dimension (0.072%) Crabgrass Control.	Dithiopyr.
1001–82	1001	Bounty Turf and Ornamental Insecticide	Imidacloprid.
1001–83	1001	Minx Ornamental Miticide/insecticide	Abamectin.
1812–338	1812	Kocide LF	Copper hydroxide.
3432–25	3432	Pool Protector Brand Pool Algaecide & Sanitizer	Quaternary ammonium compounds.
4787–33	4787	Cheminova Methyl Parathion Technical	Methyl parathion.
4822–479	4822	Raid Ant & Roach Killer 479	Piperonyl butoxide; Permethrin; o-Phenylphenol; Pyrethrins.
4822–547	4822	Deedee 1	Quaternary ammonium compounds.
5383–108	5383	Polyphase 662	Carbendazim; Carbamic acid, butyl-, 3-iodo-2-propynyl ester; 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
5383–161	5383	Z-9 Tricosene Technical	cis-9-Tricosene.
5383–162	5383	Trimedlure	4(or 5)-Chloro-2-methylcyclohexanecarboxylic acid, 1,1-dimethylethyl ester.
5383–163	5383	Disparlure Racemic	cis-7,8-Epoxy-2-methyloctadecane.
5383–168	5383	Fungitrol 1075	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
5383–173	5383	Fungitrol 11-50S Fungicide	Folpet.
5383–179	5383	Nuosept W	Bronopol; 5-Chloro-2-methyl-3(2H)-isothiazolone; 2-Methyl-3(2H)-isothiazolone.
5383–180	5383	Nuosept W Concentrate	Bronopol; 5-Chloro-2-methyl-3(2H)-isothiazolone; 2-Methyl-3(2H)-isothiazolone.
5383–185	5383	Nuosept BT10	1,2-Benzisothiazolin-3-one.
5383–186	5383	Nuosept BMC 412	1,2-Benzisothiazolin-3-one; 2-Methyl-3(2H)-isothiazolone; 5-Chloro-2-methyl-3(2H)-isothiazolone.
5813–47	5813	Bowl Gard Automatic Bowl Cleaner	Calcium hypochlorite.
5813–48	5813	Bowl Gard II Automatic Toilet Bowl Cleaner	Calcium hypochlorite.
5813–71	5813	Ultra Clorox Bleach Formula C	Sodium hypochlorite.
5813–72	5813	Ultra Clorox Bleach Formula G	Sodium hypochlorite.
10088–109	10088	Permicide 9% Concentrate	Permethrin.
10163–46	10163	Prokil Naled Insecticide	Naled.
10163–56	10163	Gowan Dimethoate E267	Dimethoate.
10163–76	10163	Gowan Wettable Sulfur	Sulfur.
10163–77	10163	Gowan Dusting Sulfur	Sulfur.
10163–120	10163	Gowan Trifluralin 10G	Trifluralin.
10163–141	10163	Sulfur Base (for Manufacturing Use)	Sulfur.
10163–205	10163	Handy Spray Betasan Crabgrass Preventer	Bensulide.
10163–249	10163	Thiophanate Methyl 80 WDG	Thiophanate-methyl.
10163–262	10163	Thiophanate Methyl 70-W Agricultural Fungicide	Thiophanate-methyl.
47371–158	47371	PVP Iodine Solution FE-150	Betadine.
59639–100	59639	Resource 80 WP Herbicide	Flumiclorac.
59639–122	59639	V-10097 Herbicide	Glyphosate-isopropylammonium; Flumiclorac.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
60063–37	60063	Echo 6F ETQ	Chlorothalonil.
60063–54	60063	Flud-E 1SC Turf Fungicide	Fludioxonil.
66222–3	66222	Pyrinex 4 EC	Chlorpyrifos.
66222–15	66222	Prometryn 4L Herbicide	Prometryn.
66222–18	66222	Chlorpyrifos 15G	Chlorpyrifos.
66222–38	66222	Sonora 4SC	Prometon.
66222–39	66222	Pramitol 4RR	Prometon.
66222–43	66222	Pramitol 4 MUP	Prometon.
66222–49	66222	Valuron 60 DF Herbicide	Metsulfuron.
66222–50	66222	Metsulfuron Methyl 60DF Herbicide	Metsulfuron.
66222–55	66222	Pramitol 2l-Diuron 2l	Diuron; Prometon.
66222–57	66222	Rimon (Novaluron) 7.5 WDG	Novaluron.
66222–62	66222	Thionex 50W Insecticide	Endosulfan.
66222–63	66222	Thionex 3 EC Insecticide	Endosulfan.
66222–98	66222	Fanfare 2EC–CAL	Bifenthrin.
66222–101	66222	Bifenthrin SC Lawn and Tree Flowable Insecticide/Miticide.	Bifenthrin.
66222–102	66222	Bifenthrin SC Flowable Insecticide/Miticide	Bifenthrin.
66222–110	66222	Prodiamine 65 WDG	Prodiamine.
66222–112	66222	Folpan 80 WDG Industrial	Folpet.
66222–116	66222	Cotton-Pro	Prometryn.
66222–122	66222	Acephate 90 SP Cotton Insecticide	Acephate.
66222–142	66222	Diuron MUP	Diuron.
66222–147	66222	Nations AQ II Metsulfuron Methyl DF	Metsulfuron.
66222–148	66222	Nations AQ II Metsulfuron Methyl 60 DF	Metsulfuron.
66222–153	66222	Triclopyr 4	Triclopyr, butoxyethyl ester.
66222–164	66222	Vegetation Manager Metsulfuron Methyl-Turf Herbicide.	Metsulfuron.
66222–165	66222	Vegetation Manager Metsulfuron Methyl DF	Metsulfuron.
66222–166	66222	Imazapyr 2SL	Imazapyr, isopropylamine salt.
66222–167	66222	Imazapyr 4 SL	Imazapyr, isopropylamine salt.
66222–171	66222	Mohave 70 EG Bareground Vegetation Control	Diuron; Imazapyr.
66222–175	66222	Pyrimax 3.2 L Herbicide	Pyrithiobac-sodium.
66222–202	66222	Ironclad Herbicide	Nicosulfuron; Rimsulfuron.
66222–206	66222	Farmsaver.com Metsulfuron Methyl 60 DF	Metsulfuron.
66222–228	66222	Pasada 1.6F	Imidacloprid.
66222–237	66222	Dupont Direx 4L	Diuron.
66222–238	66222	Mana Karmex XP Herbicide	Diuron.
66222–242	66222	Fomesafen 2 SL	Sodium salt of fomesafen.
66222–255	66222	Mana 11415	Bifenthrin.
66222–259	66222	Mana 24301	Chlorpyrifos; Bifenthrin.
70627–37	70627	Johnson Wax Professional Cockroach Gel Bait Formula 3.	Abamectin.
70627–38	70627	Johnson Wax Professional Residual Insecticide	Cyfluthrin.
70627–44	70627	Johnson Wax Professional Cockroach Bait Station	Abamectin.
70627–45	70627	Johnson Wax Professional Fire Ant Bait	Abamectin.
70627–46	70627	Johnson Wax Professional Perimeter Spray Microencapsulated Concentrate.	Cyfluthrin.
AL070001	100	Reward Landscape and Aquatic Herbicide	Diquat dibromide.
AL110002	100	Heritage Fungicide	Azoxystrobin.
AL120001	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
AR930001	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
AZ070011	71711	ET Herbicide/Defoliant	Pyraflufen-ethyl.
AZ120002	228	Nufarm Ethephon 2 Plant Growth Regulator	Ethephon.
CA020005	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA040008	264	Rovral 4 Flowable Fungicide	Iprodione.
CA050001	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA060020	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA140007	228	Nufarm Ethephon 2 Plant Growth Regulator	Ethephon.
CA930015	264	Rovral 4 Flowable Fungicide	Iprodione.
CA970033	228	Riverdale Solution Water Soluble	2,4-D, dimethylamine salt.
CO150003	55146	Gibgro 4LS	Gibberellic acid.
CO980003	5481	Orthene Turf, Tree & Ornamental Sprayb WSP	Acephate.
FL110011	100	Heritage Fungicide	Azoxystrobin.
FL130004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
FL890017	5481	Orthene 75 S Soluble Powder	Acephate.
FL890018	5481	Orthene 75 S Soluble Powder	Acephate.
FL890019	5481	Orthene 75 S Soluble Powder	Acephate.
FL890022	5481	Orthene 75 S Soluble Powder	Acephate.
FL940002	5481	Orthene 75 S Soluble Powder	Acephate.
GA000001	59639	Knack Insect Growth Regulator	Pyriproxyfen.
GA050003	100	Caparol 4l	Prometryn.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
GA110001	100	Abound Flowable Fungicide	Azoxystrobin.
GA110005	352	Dupont Coragen Insect Control	Chlorantraniliprole.
GA110007	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
GA880004	5481	Orthene 75 S Soluble Powder	Acephate.
GA960002	5481	Orthene 75 S Soluble Powder	Acephate.
HI140001	61842	Lime-Sulfur Solution	Lime sulfur.
ID980003	19713	Drexel Endosulfan 3EC	Endosulfan.
IN110001	100	Abound Flowable Fungicide	Azoxystrobin.
KY100003	100	Quadris Flowable Fungicide	Azoxystrobin.
LA120019	352	Dupont Leadoff Herbicide	Rimsulfuron; Thifensulfuron.
LA130002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
LA930001	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
LA950001	464	Chlorine	Chlorine.
MA090001	100	Callisto Herbicide	Mesotrione.
MD130005	100	Abound Flowable Fungicide	Azoxystrobin.
ME070002	264	Provado 1.6 Flowable Insecticide	Imidacloprid.
ME090003	100	Callisto Herbicide	Mesotrione.
ME120003	228	Nufarm Ethephon 2 Plant Growth Regulator	Ethephon.
MI140008	100	Switch 62.5WG	Cyprodinil; Fludioxonil.
MI160001	100	Heritage Fungicide	Azoxystrobin.
MN070001	55146	Agritin	Fentin hydroxide.
MN070008	55146	Agri Tin Flowable	Fentin hydroxide.
MO050004	100	Caparol 4L	Prometryn.
MO120002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
MO140004	100	Abound Flowable Fungicide	Azoxystrobin.
MS010003	71368	Roundup Herbicide	Glyphosate-isopropylammonium.
MS120013	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
MS900016	71368	Weedar 64 Broad Leaf Herbicide	2,4-D, dimethylamine salt.
MS910004	228	Riverdale Weedestroy AM-40 Amine Salt	2,4-D, dimethylamine salt.
MT060007	100	Touchdown CT Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
NC110003	100	Quadris Flowable Fungicide	Azoxystrobin.
NC110006	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
ND030011	55146	Agri Tin Water Soluble Pack	Fentin hydroxide.
ND040007	71368	Nufarm Credit Systemic Extra Herbicide	Glyphosate-isopropylammonium.
ND050001	100	Callisto	Mesotrione.
ND060002	524	RT 3 Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
ND060003	100	Touchdown CT Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
NE000002	264	Rovral 4 Flowable Fungicide	Iprodione.
NE150002	100	Heritage Fungicide	Azoxystrobin.
NJ130011	100	Avid 0.15EC Miticide/Insecticide	Abamectin.
NM110003	81880	Sandea Herbicide	Halosulfuron-methyl.
NM130002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
NM140003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
NV980001	100	Agri-Mek 0.15EC	Abamectin.
OH110004	100	Abound Flowable Fungicide	Azoxystrobin.
OH130003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
OK110004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
OR010034	5481	Orthene 75 S Soluble Powder	Acephate.
OR010035	5481	Orthene 97 Pellets	Acephate.
OR060019	5481	Orthene 97	Acephate.
OR940036	228	Riverdale Weedestroy AM 40 Amine Salt	2,4-D, dimethylamine salt.
PA110001	100	Abound Flowable Fungicide	Azoxystrobin.
PA130004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
SC110003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
SC120002	100	Abound Flowable Fungicide	Azoxystrobin.
TN080010	100	Aatrex 4L	Atrazine.
TN110001	100	Abound Flowable Fungicide	Azoxystrobin.
TN130003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
TX000005	5481	Orthene 97 Pellets	Acephate.
TX110012	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
TX120004	228	Nufarm Ethephon 2 Plant Growth Regulator	Ethephon.
TX150003	100	Heritage Fungicide	Azoxystrobin.
TX830022	5481	Orthene 75 S Soluble Powder	Acephate.
TX900001	5481	Orthene 75 S Soluble Powder	Acephate.
TX970011	5481	Orthene 90 S	Acephate.
UT000003	5481	Orthene 97 Pellets	Acephate.
VA050003	100	Caparol 4l	Prometryn.
VA110001	100	Abound Flowable Fungicide	Azoxystrobin.
VA130008	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
VA150002	100	Heritage Fungicide	Azoxystrobin.
WA050014	5481	Orthene 97	Acephate.
WA070001	264	Rovral 4 Flowable Fungicide	Iprodione.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Chemical name
WA090022	5481	Orthene 97	Acephate.
WA110001	100	Callisto Herbicide	Mesotrione.
WA120006	100	Switch 62.5WG	Cyprodinil; Fludioxonil.
WA940032	228	Riverdale Weedestroy AM-40 Amine Salt	2,4-D, dimethylamine salt.
WA980012	19713	Drexel Endosulfan 3EC	Endosulfan.
WI010006	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
WI060002	5481	Orthene 75 S Soluble Powder	Acephate.
WI060003	5481	Orthene 97	Acephate.
WI950007	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
WY030004	352	Dupont Asana XL Insecticide	Esfenvalerate.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419.
228	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
264	Bayer Cropscience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
352	E. I. Du Pont de Nemours and Company, Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805.
432	Bayer Environmental Science, A Division of Bayer Cropscience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
464	The Dow Chemical Co., 1501 Larkin Center Drive, 200 Larkin Center, Midland, MI 48674.
498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.
524	Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005.
777	Reckitt Benckiser LLC, 399 Interpace Parkway, Parsippany, NY 07054.
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042.
1001	Cleary Chemicals, LLC, c/o Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
1812	Griffin LLC, c/o. DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714.
3432	N. Jonas & Co., Inc., P.O. Box 425, Bensalem, PA 19020.
4787	Cheminova A/S, c/o FMC Corporation, 1735 Market Street, Philadelphia, PA 19103.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5383	Troy Chemical Corp., c/o Troy Corporation, 8 Vreeland Road, Florham Park, NJ 07932.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660.
5813	The Clorox Co., c/o PS&RC, P.O. Box 493, Pleasanton, CA 94566.
10088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113.
47371	H&S Chemicals Division, c/o Lonza Inc., 90 Boroline Road, Allendale, NJ 07401.
55146	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
60063	Sipcam Agro USA, Inc., 2525 Meridian Pkwy., Suite 350, Durham, NC 27713.
61842	Pyxis Regulatory Consulting, Inc., Agent for Tessenderlo Kerley, Inc., 4110 136th Street CT NW., Gig Harbor, WA 98332.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70627	Diversey, Inc., P.O. Box 19747, Charlotte, NC 28219.
71368	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
71711	Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808.
81880	Canyon Group LLC, c/o Gowan Company, 370 S. Main Street, Yuma, AZ 85364.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. EPA will provide a 180-day comment period on the proposed requests. Thereafter, the EPA Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon

cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products until January 15, 2018, or the date of that the cancellation notice is published in the **Federal Register**, whichever is later. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 26, 2017.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2017–16370 Filed 8–2–17; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—extension without change.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the Elementary-Secondary Staff Information Report (EEO–5).

DATES: Written comments on this notice must be submitted on or before September 5, 2017.

ADDRESSES: Comments on this notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, *oira_submission@omb.eop.gov.* Commenters are also encouraged to send comments to the EEOC online at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on the Web site for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy. Hard copy comments should be sent to Bernadette Wilson, Acting Executive Officer, EEOC, 131 M Street NE., Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) The EEOC will post online at *http://www.regulations.gov* all comments submitted via the online rulemaking portal, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide, except as noted below. The EEOC reserves the right to refrain from posting comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street NE., Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 131 M Street NE., Room 4SW30F, Washington, DC 20507; (202) 663–4949 (voice) or *ronald.edwards@eeoc.gov.* Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice), (202) 663–4494 (TTY), or email at: *newsroom@eeoc.gov.*

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on April 20, 2017 allowing for a 60-day public comment period. There were no comments received from the public.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB-Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 6024.[1]

Reporting Hours (biennial): 102,839.32.

Respondent Cost Burden (biennial): $0.

Federal Cost: $190,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The EEOC has updated its methodology for calculating annual burden to reflect the different staff responsible for preparing and filing the EEO–5. The EEOC's revised burden estimate reflects that the bulk of the work in biennially preparing an EEO–5 report is performed by computer support specialists, executive administrative staff, and payroll and human resource professionals; the revised estimate also includes time spent by school district finance professionals and superintendents who, in a few cases, may consult briefly during the reporting process. The

[1] This number represents the number of filers from the most recently completed EEO–5 survey in 2014.

revised estimates reflect input obtained by the EEOC during a limited survey of school districts with varying resource levels and student populations. The school districts provided information on the types of employees that participate in preparation of the EEO–5 report and the amount of time spent by each type of employee. After accounting for the time spent by the various employees who have a role in preparing an EEO–5, the EEOC estimates that a school district will spend 17.07 hours to prepare the report, and estimates that the aggregate biennial hour burden for all respondents is 102,839.32. The cost associated with the burden hours was calculated using median hourly wage rates obtained from the Department of Labor [2] for each job identified above as participating in the submission of the survey; the burden hour cost per school district will be approximately $539.57, while the estimated total biennial burden cost for all 6024 school districts will be $3,250,361.25 (See Table 1 [3]).

TABLE 1—ESTIMATE OF BURDEN FOR EEO–5 REPORT

	Hourly wage rate	Burden hours per district	Burden hour cost per district [4]	Total burden hours [5]	Total burden hour cost [6]
					N = 6024
COMPUTER SUPPORT SPECIALIST (IT PROFESSIONAL/DATA PROCESSING SPECIALIST)	25.21	3.4286	86.4343	20653.7143	520680.1371
DIRECTOR OF SCHOOL FINANCE (FINANCIAL MANAGERS)	56.73	0.1429	8.1043	860.5714	48820.2171
EXECUTIVE CLERICAL STAFF	26.66	2.9286	78.0757	17641.7143	470328.1029
HUMAN RESOURCE SPECIALIST	28.06	5.4286	152.3257	32701.7143	917610.1029
PAYROLL SPECIALIST	20.26	1.4286	28.9429	8605.7143	174351.7714
SENIOR HUMAN RESOURCE MANAGERS	50.21	3.4286	172.1486	20653.7143	1037022.9943
SUPERINTENDENT (SCHOOL MANAGEMENT OCCUPATIONS	47.38	0.2857	13.5371	1721.1429	81547.7486
SUB TOTAL		17.0716	539.5686	102839.3184	3250361.2464

These estimates are based on an assumption of paper reporting. However, the EEOC has made electronic filing much easier for respondents required to file the EEO–5 Report. As a result, more respondents are using this filing method. This development, along with the greater availability of human resource information software, is expected to significantly reduce the actual burden of reporting. The Commission continues to develop more reliable estimates of reporting burdens given the significant increase in electronic filing and explore new approaches to make such reporting even less burdensome. In order to help reduce survey burden, respondents are encouraged to report data electronically, whenever possible.

Dated: July 24, 2017.

For the Commission.

Victoria A. Lipnic,

Acting Chair.

[FR Doc. 2017–16340 Filed 8–2–17; 8:45 am]

BILLING CODE 6570–01–P

[2] Median hourly wage rates were obtained from the Bureau of Labor Statistics (see U.S. Dept. of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, *http://www/bls.gov/ooh/*)

[3] Figures shown in table have been rounded.

[4] The figures in this column were calculated by multiplying the figures in the Hourly Wage Rate column by those in the Burden Hours Per District Column.

[5] The figures in this column were calculated by multiplying the figures in the Burden Hours Per District column by 6024, the total number of respondents.

[6] The figures in this column were calculated by multiplying the figures in the Burden Hour Cost Per District column by 6024, the total number of respondents.

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 August 17, 2017.

A. Federal Reserve Bank of Minneapolis (Brendan S. Murrin, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Boyd Brent Myers, Tazewell, Tennessee, as trustee of six McNeilus family trusts, all of Rochester, Minnesota;* to retain control of the voting shares of Sterling Financial Group, Inc., Rochester, Minnesota, and thereby indirectly retain control of Sterling State Bank, Austin, Minnesota.

Board of Governors of the Federal Reserve System, July 28, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–16292 Filed 8–2–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0576]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is

published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (42 CFR part 73)—Revision—Centers for Disease Control and Prevention (CDC)/Division of Select Agents and Toxins (DSAT) and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS)/Agriculture Select Agent Services (AgSAS).

Background and Brief Description

Subtitle A of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (42 U.S.C. 262a), requires the United States Department of Health and Human Services (HHS) to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to public health and safety (select agents and toxins). Subtitle B of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which may be cited as the Agricultural Bioterrorism Protection Act of 2002), (7 U.S.C. 8401), requires USDA to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to animal or plant health, or animal or plant products (select agents and toxins). The HHS Secretary delegated the responsibility for promulgating and implementing select agent regulations found at 42 CFR part 73 to CDC Division of Select Agents and Toxins (DSAT). The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS)/ Agriculture Select Agent Services (AgSAS) was delegated responsibility by USDA for select agent regulations (7 CFR part 331, and 9 CFR part 121). The Federal Select Agent Program (FSAP) is the collaboration of the DSAT and AgSAS to administer the select agent regulations in a manner to minimize the administrative burden on persons subject to the select agent regulations. Accordingly, CDC and APHIS have adopted an identical system to collect information for the possession, use, and transfer of select agents and toxins.

CDC is requesting OMB approval to revise the collected information under the select agent regulations through the use of the APHIS/CDC Form 3 (Incident Notification and Reporting (Theft/Loss/ Release)). The form (42 CFR 73.19(a),(b)) must be completed by an individual or an entity whenever the individual or entity experiences a theft, loss, or release of a select agent or toxin. CDC is proposing to revise the form to further clarify what needs to be reported as a ''release'' and ''loss'' and additional fields to assist with categorizing the type of release (*e.g.,* spill within secondary containment, occupational exposure, possible breach of facility containment, etc.), type of exposure, and the understanding of safety and security risk levels relative to human illness. Guidance documents were also added to assist with the following forms: Application for Registration (APHIS/CDC Form 1), Request to Transfer Select Agents and Toxins (APHIS/CDC Form 2), Report of Identification of a Select Agent or Toxin (APHIS/CDC Form 4), Request of Exemption of Select Agents and Request for Exclusions Toxins for an Investigational Product (APHIS/CDC Form 5), Request for Expedited Review, Security Plan, Security Plan, Biosafety Plan, Request Regarding a Restricted Experiment, Incident Response Plan, Training, and Records.

Annualized burden hours and cost were calculated based on data obtained from 2016 Annual Report of the Federal Select Agent Program for submissions to FSAP for 2016. CDC requests a three year approval for this Revision. The estimated annualized Burden has been reduced to 8,408 hours due to the decrease in the number of Respondents. There is no cost to Respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
73.7	Application for Registration (APHIS/CDC Form 1)	1	1	4
73.7	Amendment to a Certificate of Registration	238	7	1
73.7	Application for Registration (APHIS/CDC Form 1) Guidance	1	1	1
73.16	Request to Transfer Select Agents and Toxins (APHIS/CDC Form 2)	188	1	1
73.16	Request to Transfer Select Agents and Toxins (APHIS/CDC Form 2) Guidance.	188	1	30/60
73.19	Report of Theft, Loss, or Release of Select Agent or Toxin (APHIS/CDC Form 3).	205	1	90/60
73.19	Report of Theft, Loss, or Release of Select Agent or Toxin (APHIS/CDC Form 3) Guidance.	205	1	30/60
73.5 & 6	Report of Identification of a Select Agent or Toxin from a Clinical/Diagnostic Specimen (APHIS/CDC Form 4A).	1,030	1	30/60
73.5 & 6	Report of Identification of a Select Agent or Toxin from a Proficiency Test (APHIS/CDC Form 4B).	10	1	30/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
73.5 & 6	Federal Law Enforcement Reporting Seizure of Select Agent or Toxin (APHIS/CDC Form 4C).	1	1	30/60
73.5 & 6	Report of Identification of a Select Agent or Toxin (APHIS/CDC Form 4) Guidance.	1,030	1	30/60
73.5 & 73.6	Request of Exemption of Select Agents and Toxins for an Investigational Product (APHIS/CDC Form 5).	1	1	30/60
73.5 & 73.6	Request of Exemption of Select Agents and Toxins for an Investigational Product (APHIS/CDC Form 5) Guidance.	1	1	30/60
73.3 & 73.4	Request for Exclusions	3	1	30/60
73.3 & 73.4	Request for Exclusions Guidance	3	1	30/60
73.9	Documentation of Self-inspection	238	1	1
73.1	Request for Expedited Review	1	1	15/60
73.1	Request for Expedited Review Guidance	1	1	15/60
73.11	Security Plan	238	1	5
73.11	Security Plan Guidance	238	1	30/60
73.11	Security Plan Template	238	1	30/60
73.12	Biosafety Plan	238	1	5
73.12	Biosafety Plan Guidance	238	1	30/60
73.12	Biosafety Plan Template	238	1	30/60
73.13	Request Regarding a Restricted Experiment	1	1	30/60
73.13	Request Regarding a Restricted Experiment Guidance	1	1	30/60
73.14	Incident Response Plan	238	1	5
73.14	Incident Response Plan Guidance	238	1	30/60
73.14	Incident Response Plan Template	238	1	30/60
73.15	Training	238	1	30/60
73.15	Training Guidance	238	1	30/60
73.17	Records	238	1	30/60
73.17	Guidance on the Inventory of Select Agents	238	1	30/60
73.20	Administrative Review	1	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–16333 Filed 8–2–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2014–0015]

Vaccines Adverse Event Reporting System (VAERS) 2.0 Form

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the availability of the final Vaccines Adverse Event Reporting System (VAERS) 2.0 Form *www.vaers.hhs.gov.* The VAERS 2.0 Form replaces the VAERS–1 Form which had been in use since 1990.

DATES: The VAERS 2.0 Form was implemented June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Tiffany Suragh, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–26; Atlant, Georgia 30329–4018; Telephone: (404) 498–0681.

SUPPLEMENTARY INFORMATION: VAERS is an important and critical ''early warning system'' in the federal vaccine safety infrastructure for identifying adverse events after receipt of childhood, adolescent, and adult vaccines licensed for use in the United States. Healthcare providers and vaccine manufacturers are required under section 2125(b) of the Public Health Service Act (42 U.S.C. 300aa–25(b)) to submit VAERS reports regarding the occurrence of any event set forth in the Vaccine Injury Table which occurs within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table and the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert. VAERS also accepts reports on adverse events following receipt of other vaccines. Patients, parents and others aware of adverse events can also submit VAERS reports. Although VAERS is not designed to assess if a vaccine caused an adverse event, VAERS provides HHS/CDC and HHS/FDA with important early information that might signal a potential problem. If the VAERS data suggest a possible association between an adverse event and vaccination, the relationship will be further assessed. In recent years VAERS has received approximately 40,000 U.S. reports annually.

VAERS is a mandated activity for the Department of Health and Human Services (HHS) and VAERS data are used by Federal agencies, State Health Officials, health care providers, manufacturers, and the public. Therefore, it is important to maximize the usefulness of this system. The information collected by the final VAERS 2.0 Form will be similar to that from the current VAERS–1 Form so historical comparisons can be made. However, the changes in the final VAERS 2.0 Form should improve reporting efficiency and data quality. VAERS 2.0 Form offers standardized responses, clearer instructions and guidance, and improved online reporting capability. Select questions

have been updated, with questions added, removed, and reorganized to decrease response burden and maximize usability. The final VAERS 2.0 Form can be found at *http://www.regulations.gov* and *www.vaers.hhs.gov.*

During the development of the VAERS 2.0 Form, CDC and FDA sought input from key stakeholders in the Federal government, State Health Officials involved in vaccine safety and vaccine programs, and other public health partners. In addition, the VAERS 2.0 Form was presented to three Federal advisory committees, the Advisory Commission on Childhood Vaccines (September 5, 2014), the National Vaccine Advisory Committee (September 9, 2014), and the Advisory Committee on Immunization Practices (October, 2014). Finally, the final VAERS form was tested with potential users (*e.g.,* physicians, nurses, pharmacists, patients, and parents).

On November 24, 2014 HHS/CDC published a notice in the **Federal Register** (79 FR 69853) announcing the opening of a docket to obtain public comment on the draft VAERS 2.0 Form. HHS/CDC received 19 comments on the draft VAERS 2.0 Form from members of the general public and professional and advocacy organizations. All comments were carefully reviewed and considered in the preparation of the final VAERS form.

Dated: July 31, 2017.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2017–16335 Filed 8–2–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–17WE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Knowledge, Attitudes, and Practices related to a Domestic Readiness Initiative on Zika Virus Disease—New—Office of the Associate Director for Communication, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since late 2015, Zika has rapidly spread through Puerto Rico. As of November 2016, there have been 35,136 confirmed cases of Zika in Puerto Rico, with 2,797 cases among pregnant women and 67 cases of Guillain-Barré caused by Zika. In the continental United States, there have been 4,432 travel-associated cases of Zika and 185 locally-acquired Zika cases in Florida and Texas. Due to the urgent nature of this public health emergency, CDC is implementing a Zika prevention communication and education initiative.

The purpose of this survey is to assess a domestic U.S. and Puerto Rico-based communication and education initiative aimed at encouraging at-risk populations to protect themselves and their families from Zika virus infection. CDC will assess the following communication and education objectives: (1) Determine the reach and saturation of the initiative's messages in Puerto Rico and the domestic U.S.; (2) measure the extent to which messages were communicated clearly across multiple channels to advance knowledge and counter misinformation; and (3) monitor individual and community-level awareness, attitudes and likelihood to follow recommended behavior. This data collection includes 2,400 surveys conducted in four geographic locations following peak campaign activity to assess key outcomes of the initiative. The information will be used to make recommendations for improving communication and education regarding the prevention and spread of the Zika virus. Information may also be used to develop presentations, reports, and manuscripts to document the communication effort and lessons learned in order to inform future similar communication efforts.

The goal of this project is to determine knowledge, attitudes, and practices related to a Domestic Readiness Initiative on Zika Virus Disease being launched in the United States (U.S.) mainland and Puerto Rico.

CDC will seek to gain OMB approval of this new information collection request to conduct a final survey (wave 3) to evaluate the CDC Domestic Readiness Initiative for Zika Virus. The Zika Readiness Initiative campaign has been implemented in two phases with peak campaign activity coinciding with the height of mosquito season during the summer months of 2016 (phase 1) and 2017 (phase 2). OMB granted CDC an emergency review approval in 2016 (OMB Control Number 0920–1136, expiration 3/31/2017) to conduct the first two waves of data collection which captured the effectiveness of the first phase of the campaign. The third wave of data collection will allow CDC to capture the effectiveness of the second phase of the campaign being implemented through late summer/early fall 2017.

While the campaign objectives and the call to action remain the same across both phases, campaign materials have been modified between phases based the first two waves of data collection to better address misinformation about Zika and promote a sense of urgency to adopt preventive actions. The third and final wave of data collection is vital to CDC's continued understanding of how the campaign information is received by target audiences and what actions are being taken to prevent Zika virus transmission Findings will be used to improve planning, implementation, refinements and demonstrate outcomes

of a Zika Domestic Readiness Initiative communication and education effort.

The total estimated annualized burden hours are 560. There are no costs to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. Domestic Adults	Zika Readiness Initiative Questionnaire	1,800	1	14/60
Puerto Rico Adults	Zika Readiness Initiative Questionnaire	600	1	14/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–16332 Filed 8–2–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–2163]

Child-Resistant Packaging Statements in Drug Product Labeling; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Child-Resistant Packaging Statements in Drug Product Labeling.'' This guidance is intended to assist applicants, manufacturers, packagers, and distributors who choose to include child-resistant packaging (CRP) statements in prescription and over-the-counter human drug product labeling. The guidance discusses what information should be included to support CRP statements and to help ensure that such labeling is clear, useful, informative, and, to the extent possible, consistent in content and format.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 2, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–D–2163 for ''Child-Resistant Packaging Statements in Drug Product Labeling.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Lostritto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4132, Silver Spring, MD 20993, 301–796–1697; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Child-Resistant Packaging Statements in Drug Product Labeling.'' In 1970, the Poison Prevention Packaging Act (PPPA) was enacted to protect children (under 5 years of age) from unintentional exposure to household substances including food, drugs, and cosmetics. Under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), a drug that has packaging or labeling that is in violation of a regulation issued pursuant to section 3 or 4 of the PPPA is deemed to be misbranded. FDA was responsible for enforcing the PPPA until 1973, when jurisdiction was transferred to the U.S. Consumer Product Safety Commission (CPSC). Because of FDA's authority to regulate labeling for prescription and nonprescription drug products, if firms choose to make statements in their labeling for such products about CRP, such statements must comply with FDA's statutory and regulatory requirements. The draft guidance explains that to ensure that CRP statements on labeling are not false or misleading, such statements should only be used when the drug product packaging has been shown to comply with the applicable CPSC regulatory standards and test procedures for CRP. This guidance is intended to apply to FDA-regulated drug products that bear CRP statements, regardless of whether CRP is required for such products under 16 CFR 1700. For example, bulk packages of prescription drugs that are shipped to pharmacies for repackaging by a pharmacist are not required to utilize CRP, but a firm may nevertheless choose to use CRP (and a CRP statement) for such drugs.

CPSC's regulations list ''special packaging standards'' (also referred to herein as child-resistant packaging, or CRP) for a wide range of household products, including most oral prescription drugs and many nonprescription drug products (see 16 CFR 1700 for substances requiring special packaging and the relevant packaging standards and testing procedures). There are different ways to make packaging child-resistant, with the most common forms being a child-resistant closure (*e.g.,* a ''safety cap'') and certain unit-dose blister packaging (*e.g.,* puncture-resistant and peel-push blisters).

Child-resistant packaging is regarded as an important public health safety tool for avoiding harmful outcomes related to unsupervised pediatric ingestions. FDA advocates that all drugs, irrespective of the type of packaging, be stored safely out of reach and sight of children to further the overall public health efforts to address this safety issue.

Because health care professionals and consumers may not be able to determine on visual inspection whether the packaging is child-resistant, a labeling statement may help to identify this attribute. Therefore, in this guidance, we recommend text that may be appropriate to consider when including CRP statements on the containers and packaging of products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on child-resistant packaging statements in drug product labeling. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. Because FDA's guidance documents do not bind the public or FDA to any requirements, this guidance is not considered to be subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information for submitting labeling in original and supplemental new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license applications (BLAs) in 21 CFR 314.50(e) and (l), 314.94(a)(8), 314.70, and 314.97, and 21 CFR 601.2 and 601.12 has been approved under OMB control number 0910–0001 and 0910–0338, respectively. The collection of information for preparing prescription drug product labeling under 21 CFR 201.56 and 201.57 has been approved under OMB control number 0910–0572. The collection of information for Drug Facts labeling under 21 CFR 201.66 has been approved under OMB control number 0910–0340. The collection of information for Medication Guides has been approved under OMB control number 0910–0393. The collection of information for submitting chemistry, manufacturing, and controls information in original and supplemental NDAs, ANDAs, and BLAs in 21 CFR 314.50(d)(1), 314.94(a)(9), 314.70, and 314.97, and 21 CFR 601.2 and 601.12 has been approved under OMB control number 0910–0001 and 0910–0338, respectively.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: July 31, 2017.

Anna K. Abram,

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

[FR Doc. 2017–16379 Filed 8–2–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2489]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a proposed biosimilar product notified FDA that a patent infringement action was filed in connection with the applicant's biologics license application (BLA). Under the Public Health Service Act (PHS Act), an applicant for a proposed biosimilar product or interchangeable product must notify FDA within 30 days after the applicant was served with a complaint in a patent infringement action described under the PHS Act. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6246, Silver Spring, MD 20993–0002, 240–402–0979, *daniel.orr@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the requirements for a BLA for a proposed biosimilar product or a proposed interchangeable product (351(k) BLA). Section 351(l) of the PHS Act, also added by the BPCI Act, describes certain procedures for exchanging patent information and resolving patent disputes between a 351(k) BLA applicant and the holder of the BLA reference product. If a 351(k) applicant is served with a complaint for a patent infringement described in section 351(l)(6) of the PHS Act, the applicant is required to provide FDA with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(l)(6)(C) of the PHS Act in the **Federal Register**.

FDA received notice of the following complaint under section 351(l)(6)(C) of the PHS Act: *Amgen, Inc., et al.* v. *Coherus Biosciences, Inc.,* 17–cv–00546 (D. Del., filed May 10, 2017).

FDA has only a ministerial role in publishing notice of a complaint received under section 351(l)(6)(C) of the PHS Act and does not perform a substantive review of the complaint.

Dated: July 31, 2017.

Anna K. Abram,

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

[FR Doc. 2017–16380 Filed 8–2–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0002]

B. Braun Medical, Inc.; Withdrawal of Approval of Three New Drug Applications and One Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of three new drug applications (NDAs) and one abbreviated new drug application (ANDA) held by B. Braun Medical, Inc. B. Braun Medical, Inc., notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective September 5, 2017.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: B. Braun Medical, Inc., 901 Marcon Blvd., Allentown, PA 18109, has informed FDA that the following three NDAs and one ANDA are no longer marketed and has requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). By its request, B. Braun Medical, Inc., has also waived its opportunity for a hearing. Withdrawal of approval of an application under § 314.150(c) is without prejudice to refiling.

NDA/ANDA	Proprietary name
BN 090024	Dextran 70, 6% Dextran 70 in 0.9% NaCl Injection.
BN 160767	Dextran 40, 10% Dextran 40 in 0.9% NaCl Injection and 10% Dextran 40 in 5% Dextrose.
BN 890104	Pentaspan® (10% Pentastarch in 0.9% NaCl Injection in EXCEL Containers).
BA 740283	Hespan® (6% Hetastarch in 0.9% NaCl in EXCEL Containers).

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn, effective September 5, 2017. Introduction or delivery for introduction into interstate commerce for products without an approved NDA or ANDA violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on the date that this notice becomes effective (see the **DATES** section) may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise becomes violative, whichever occurs first.

Dated: July 31, 2017.

Anna K. Abram,

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

[FR Doc. 2017–16377 Filed 8–2–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Nasser Chegini, Ph.D., University of Florida: Based on the report of an investigation conducted by the University of Florida (UF), the prior

corrections in the scientific record noted below, and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Nasser Chegini, retired as a Professor in the Department of Obstetrics and Gynecology, UF, engaged in research misconduct in research supported by National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH), grant 2 R01 HD037432.

ORI acknowledges that the following papers were retracted as a result of the institution's investigation:

1. *J Clin Endocrinol Metab* 88(10):4967–4976, 2003. Retraction in: *J Clin Endocrinol Metab* 100(1):318, 2015 Jan.
2. *Reprod Biol Endocrinol* 1:125, 2003. Retraction in: *Reprod Biol Endocrinol* 13:25, 2015 Apr 3.
3. *J Clin Endocrinol Metab* 88(3):1350–1361, 2003. Retraction in: *J Clin Endocrinol Metab* 100(1):318, 2015 Jan.
4. *Hum Reprod* 21(10):2555–2563, 2006. Retraction in: *Hum Reprod* 30(1):249, 2015 Jan (Epub 2014 Nov 6).
5. *Mol Hum Reprod* 12(4):245–256, 2006. Retraction in: *Mol Hum Reprod* 20(12):1258, 2014 Dec (Epub 2014 Nov 13).
6. *Mol Hum Reprod* 13(11):797–806, 2007. Retraction in: *Mol Hum Reprod* 20(12):1259, 2014 Dec (Epub 2014 Nov 13).
7. *Reprod Sci* 15(10):993–1001, 2007. Retraction in: *Reprod Sci* 21(10):1326, 2014 Oct.
8. *J Cell Mol Med* 12(1):227–240, 2008. Retraction in: *J Cell Mol Med* 19(10):2512, 2015 Oct.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying data that were included in: *J Reprod Immunol* 73(2):118–29, 2007 (hereafter referred to as ''*JRI* 2007''). Specifically, ORI found that Respondent falsified data points and standard errors of the mean in bar graphs plotting matrix metalloprotease expression or activity in the following figures of *JRI* 2007:

- Figures 2A, 2B, 2C
- Figures 3A, 3B, 3C
- Figure 4B
- Figure 5C
- Figure 6B
- Figures 7A, 7B, 7C
- Figure 8, middle left panel and lower right panel

Dr. Chegini entered into a Voluntary Settlement Agreement with ORI, in which he voluntarily agreed to the following, beginning on July 12, 2017:

(1) Respondent has not applied for or engaged in U.S. Public Health Service (PHS)-supported research since 2012; Respondent has no intention of applying for or engaging in PHS-supported research or otherwise working with PHS; however, if within five (5) years of the effective date of the Agreement, the Respondent receives or applies for PHS support, the Respondent agreed to have his research supervised for a period of five (5) years from the date of his employment in a position in which he receives or applies for PHS support and agreed to notify his employer(s)/institution(s) of the terms of this supervision; Respondent agreed that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) Respondent agreed that for a period of five (5) years beginning on the date on which the Respondent receives or applies for PHS support, any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of five (5) years, beginning with the effective date of the Agreement; and

(4) as a condition of the Agreement, Respondent will request that *J Reprod Immunol* 73(2):118–29, 2007 be retracted.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Kathryn M. Partin,

Director, Office of Research Integrity.

[FR Doc. 2017–16311 Filed 8–2–17; 8:45 am]

BILLING CODE 4150–31–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, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Clinical Trial Implementation Grant (R01).

Date: August 28, 2017.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Program, Division of Extramural Activities, Room 3F40B National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.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: July 28, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–16314 Filed 8–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; AIDSRRC Independent SEP.

Date: August 23, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Peter R. Jackson, Ph.D., Chief, AIDS Research Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G20, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5049, *pjackson@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: July 28, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–16313 Filed 8–2–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2017–0028]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, August 23, 2017, in San Diego, California. The meeting will be open to the public.

DATES: The COAC will meet on Wednesday, August 23, 2017, from 9:00 a.m. to 1:00 p.m. PDT. Please note that the meeting may close early if the committee has completed its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using one of the methods indicated below:

For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT by August 22, 2017, either online at *https://apps.cbp.gov/te_reg/index.asp?w=115;* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290. You must register prior to the meeting in order to attend the meeting in person.

For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=114* by 5:00 p.m. EDT by August 22, 2017.

Please feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later need to cancel, please do so by August 22, 2017, utilizing the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=115* to cancel an in person registration or *https://apps.cbp.gov/te_reg/cancel.asp?w=114* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the Omni Hotel, 675 L Street, San Diego, CA 92101. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs & Border Protection, at (202) 344–1440, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than August 10, 2017, and must be identified by Docket No. USCBP–2017–0028, and may be submitted by *one (1)* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290, Attention: Florence Constant-Gibson.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (USCBP–2017–0028) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2017–0028. To submit a comment, click the ''Comment Now!'' button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on August 23, 2017. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290 OR Ms. Valarie Neuhart, Acting Director and Designated Federal Officer, can also be reached at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Agenda

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Trade Modernization Subcommittee will discuss and deliver recommendations related to the subcommittee's International Engagement and Trade Facilitation Working Group which is identifying examples of best practices in the U.S. and abroad that facilitate trade. The subcommittee will also discuss the progress of the E-Commerce Working Group and will deliver

recommendations related to the subcommittee's Section 321 Working Group. The Section 321 Working Group has focused on facilitative methods for the processing of low value ''de-minimis'' shipments while maintaining security and compliance.

2. The One U.S. Government Subcommittee will discuss the progress of the Fish & Wildlife Service Working Group and will present recommendations in this area. The subcommittee will also discuss the progress of the Automated Commercial Environment core functions and the Single Window Effort, including the North American Single Window progress.

3. The Global Supply Chain Subcommittee will present their involvement in the present draft of an updated supply chain security Customs-Trade Partnership Against Terrorism (C–TPAT) best practice framework, provide an update to on-going input work regarding the C–TPAT minimum security criteria, and a progress report with recommendations from the Pipeline Working Group.

4. The Trusted Trader Subcommittee will continue the discussion for an enhanced Trusted Trader program that includes engagement with CBP to include relevant partner government agencies with a potential for international interoperability. A review of the pilot program status and benefits will also be undertaken in parallel to determine the optimum benefits that would be assigned to Trusted Trader participants.

5. The Trade Enforcement & Revenue Collection (TERC) Subcommittee will discuss the progress made on TERC recommendations and updates from the Anti-Dumping and Countervailing Duty, Bond, Forced Labor, and Intellectual Property Rights Working Groups.

6. The Exports Subcommittee will discuss the Post Departure Filing (PDF) working group's progress in developing additional recommendations for an implementation plan of the PDF Proposal and will include steps to initiate a proof of concept that incorporates the PDF model in conjunction with the Ocean Export Manifest pilot. The subcommittee will also discuss the progress of the Truck Manifest Sub-Working Group recommendations presented at the March 1, 2017 public meeting, and progress on issues with the ongoing manifest pilots.

Meeting materials will be available by August 20, 2017, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: July 27, 2017.

Bradley Hayes,

Executive Director, Office of Trade Relations.

[FR Doc. 2017–16360 Filed 8–2–17; 8:45 am]

BILLING CODE 9111–14–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1000]

Certain Motorized Self-Balancing Vehicles; Commission Determination To Review-in-Part an Initial Determination Finding No Violation of Section 337; on Review, To Vacate One Portion of the Initial Determination and Take No Position on One Issue; and Affirmance of the Finding of No Violation and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337. On review, the Commission has determined to vacate one portion of the ID and to take no position with respect to one issue. The Commission has also determined to affirm the ID's finding of no violation of section 337 and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. 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 this investigation on May 26, 2016, based on a complaint filed on behalf of Razor USA LLC of Cerritos, California; and Inventist, Inc. and Shane Chen, both of Camas, Washington. 81 FR 33548–49. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent No. 8,738,278 (''the '278 patent''). The complaint further alleged violations of section 337 based upon false advertising, misrepresentation, and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry. The Commission's notice of investigation named the following twenty-eight respondents: Contixo Co. of Ontario, California and ZTO Store a.k.a. ZTO Trading, Inc. of Monterey Park, California (collectively, ''Contixo''); Joy Hoverboard a/k/a Huizhou Aoge Enterprise Co. Ltd (''Joy Hoverboard'') of Huizhou, China; Shenzhen Chenduoxing Electronic Technology Ltd. (''Chenduoxing''), Shareconn International, Inc. (''Shareconn''), and Shenzhen R.M.T. Technology Co., Ltd. (''RMT''); all of Guangdong, China; Cyboard LLC a/k/a Shark Empire Inc. (''Cyboard'') of Glendale, California; GyroGlyder.com (''GyroGlyder'') of Stockton, California; Soibatian Corporation d.b.a. IO Hawk and d.b.a. Smart Wheels (''Soibatian'') of Glendale, California; PhunkeeDuck, Inc. (''PhunkeeDuck'') of Floral Park, New York; Shenzhen Jomo Technology Co., Ltd. (''Jomo'') of Shenzhen City, China; Shenzhen Kebe Technology Co., Ltd. (''Kebe'') and Shenzhen Supersun Technology Co. Ltd., a.k.a. Aottom (''Supersun''), both of Shenzhen, China; Twizzle Hoverboard (''Twizzle'') of La Puente, California; Uwheels of Santa Ana, California; InMotion Entertainment Group LLC (''InMotion'') of Jacksonville, Florida; HoverTech of Hebron, Kentucky; Leray Group a/k/a ShanDao Trading Co., Ltd. (''Leray'') of Beijing, China; Spaceboard USA (''Spaceboard'') of Norcross, Georgia; Genius Technologies a.k.a. Prime Capital (''Genius Technologies'') of Hastings, Minnesota; Hangzhou Chic Intelligent Co., Ltd. (''Chic'') of Hangzhou, China; Swagway, LLC (''Swagway'') of South Bend, Indiana; Modell's Sporting Goods, Inc. (''Modell's'') of New York City, New York; Powerboard a.k.a. Optimum Trading Co. (''Powerboard'') of Hebron, Kentucky; United Integral, Inc. dba Skque Products (''Skque'') of Irwindale, California; Alibaba Group Holding Ltd. of Causeway Bay, Hong Kong and Alibaba.com Ltd. of Hangzhou, China (collectively, ''Alibaba''); Jetson Electric

Bikes LLC (''Jetson'') of New York City, New York; and Newegg, Inc. (''Newegg'') of City of Industry, California. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.* Eight respondents remain in the investigation, *i.e.,* Chic, Swagway, Modell's, Powerboard, Skque, Alibaba, Jetson, and Newegg (collectively, ''respondents''). Every other respondent was terminated from the investigation based on a consent order stipulation and proposed consent order or good cause, or was found in default.

On August 10 and November 17, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ's IDs (Order Nos. 11 and 22) terminating the investigation as to Contixo based on a consent order stipulation and proposed consent order, and as to InMotion based on a consent order stipulation, proposed consent order, and settlement agreement. On October 19 and 27, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ's IDs (Order Nos. 19 and 20) terminating the investigation as to claim 9 of the '278 patent and claim 4 of the patent. On September 7, October 11, and December 13, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ's IDs (Order Nos. 14, 18, and 26) finding respondents GyroGlyder, Soibatian, PhunkeeDuck, Jomo, Kebe, Supersun, Twizzle, and Uwheels in default, respondents Joy Hoverboard, Chenduoxing, Shareconn, RMT, and Cyboard in default, and respondents HoverTech, Leray, and Spaceboard in default, respectively. On January 17, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 27) terminating the investigation as to Genius Technologies for good cause. On February 15, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 42) granting complainants' unopposed motion to terminate the investigation as to their Lanham Act, common law, and state unfair and deceptive trade practices allegations under section 337(a)(1)(A).

On May 26, 2017, the ALJ issued his final ID and recommended determination (''RD'') on remedy and bonding. The ID finds that Alibaba is not an agent of the other respondents and therefore is not within the jurisdiction of section 337. It also finds that none of the respondents' accused products infringe the '278 patent, but that all of the defaulting respondents' accused products infringe the asserted patent based on taking the allegations in the complaint as true. The ID also finds that the technical prong of the domestic industry requirement was not satisfied with respect to the '278 patent. The cover page of the ID/RD, however, states that a violation of section 337 was found, page 75 of the ID/RD states that a violation was found as to the defaulting respondents, and the separately issued ''Notice Regarding Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond'' (May 26, 2017) (''Notice Regarding the ID'') states that a violation of section 337 was found. On June 5, 2017, the ALJ issued an erratum clarifying that there was no violation of section 337 because complainants had not satisfied the technical prong of the domestic industry requirement. He also issued a corrected ID/RD and Notice Regarding the ID on June 5, 2017; however, the error on page 75 of the ID/RD was not corrected. The Commission clarifies that the erratum also applies to (1) page 75 of the ID/RD and corrects that page to delete the statement that a violation has been found as to the defaulting respondents; and (2) footnote 47 on the same page, and corrects the footnote by striking ''infringe the '278 patent'' and substituting ''violate section 337''.

On June 12, 2017, OUII, complainants, respondent Chic, and a group of three respondents (Swagway, Modell's, and Newegg) filed separate petitions for review of the final ID. On June 20, 2017, OUII, complainants, respondent Jetson, respondent Alibaba, and a group of four respondents (Swagway, Modell's, Chic, and Newegg) filed separate responses to the opposing petitions.

Having examined the record of this investigation, including the ID, the parties' petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review (1) the ID's finding that the Commission has no jurisdiction over Alibaba; and (2) the ID's analysis regarding infringement by the defaulting respondents. The Commission has determined not to review the remainder of the final ID.

On review with respect to issue (1), the Commission determines to take no position on the ID's finding that the Commission has no jurisdiction over Alibaba. On review with respect to issue (2), the Commission vacates the ID's findings in the last paragraph on page 39 (and paragraph 5 on page 72, as well as the first sentence on page 83) that complainants have established that the defaulting respondents infringe the '278 patent. These respondents have been found in default by virtue of their failure to respond to the complaint and notice of investigation. *See* Comm'n Notice (September 7, 2016); Comm'n Notice (October 11, 2016); Comm'n Notice (December 13, 2016). Section 337(g)(1), 19 U.S.C. 1337(g)(1), provides the conditions and procedures applicable for issuing a default remedy. In light of the Commission's determination not to review the remainder of the final ID, including but not limited to the finding that the technical prong of the domestic industry requirement for the '278 patent has not been satisfied, the analysis under Section 337(g)(1) is moot.

The Commission therefore affirms the ID's finding of no violation of section 337 and terminates the investigation.

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: July 28, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–16325 Filed 8–2–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–703 (Fourth Review)]

Furfuryl Alcohol From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on January 3, 2017 (82 FR 140) and determined on April 10, 2017, that it would conduct an expedited review (82 FR 23063, May 19, 2017).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on July 28, 2017. The views of the Commission are contained in USITC Publication 4708 (July 2017), entitled *Furfuryl Alcohol from China: Investigation No. 731–TA–703 (Fourth Review).*

By order of the Commission.

Issued: July 28, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–16324 Filed 8–2–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Firearms License (FFL) RENEWAL Application—ATF F 8 (5310.11) Part 11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 proposed information collection was previously published in the [**Federal Register**, on May 25, 2017, allowing for a 60-day comment period].

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 5, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Tracey Robertson, Chief, Federal Firearms Licensing Center either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Tracey.Robertson@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

(4) *Form number:* ATF F 8 (5310.11) Part 11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(5) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: The form is filed by the licensee desiring to renew a Federal firearms license. It is used to identify the applicant, locate the business/collection premises, identify the type of business/collection activity, and determine the eligibility of the applicant.

(6) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 35,000 respondents will utilize the form, and it will take each respondent 30 minutes to complete the form.

(7) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 17,500 hours which is equal to (35,000 (total # of respondents * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: July 31, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16330 Filed 8–2–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection Friction Ridge Cards: Arrest and Institution FD–249; Applicant FD–258; Personal Identification FD–353; FBI Standard Palm Print FD–884; Supplemental Finger and Palm Print FD–884a

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division has submitted the following information collection renewal to the Office of Management and Budget (OMB) for review in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on June 5, 2017 allowing for a 60 day comment period.

DATES: Comments are encourages and will be accepted for an additional 30 day until September 5, 2017.

If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory

Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Friction Ridge Cards: Arrest and Institution; Applicant; Personal Identification; FBI Standard Palm Print; Supplemental Finger and Palm Print.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–353 (Personal Identification); FD–884 (FBI Standard Palm Print); FD–884a (Supplemental Finger and Palm Print) encompassed under OMB 1110–0046; CJIS Division, FBI, DOJ.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 78,479 respondents will complete each form within approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 14.6 million total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: July 28, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16364 Filed 8–2–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0049]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection InfraGard Membership Application and Profile

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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.

DATES: Comments are encouraged and will be accepted for 60 days until October 2, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lisa Avery, Management and Program Analyst, Strategic Initiatives Unit, Federal Bureau of Investigation, Intelligence Branch, Office of Private Sector, FBIHQ, 1075 F Street SW., Washington DC 20024 or via email at *LFAvery@fbi.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or sent to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* InfraGard Membership Application and Profile

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form is unnumbered. The applicable component within the Strategic Initiatives Unit (SIU) Office of Private Sector of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ)

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Members of the public and private-sector with a nexus to critical infrastructure protection interested in being a member of the FBI's National InfraGard Program. Personal information is collected by the FBI for vetting and background information to obtain membership to the Program and access to its secure portal. InfraGard is a two-way information sharing exchange between the FBI and members of the public and private sector focused on intrusion and vulnerabilities affecting 16 critical infrastructures. Members are provided access to law enforcement sensitive analytical products pertaining to their area of expertise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* InfraGard has approximately 50,000 members and receives approximately 7,200 new applications for membership per year. The average response time for reading and responding to the membership application and profile is estimated to be 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The estimated public burden associated with this collection is 3,600 hours. If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: July 31, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–16365 Filed 8–2–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On July 31, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Kansas in the lawsuit entitled *United States* v. *Harcros Chemicals Inc.,* Civil Action No. 2: 17–cv–2432.

The United States, on behalf of the United States Environmental Protection Agency, filed a complaint against Harcros Chemicals Inc. (''Harcros'') seeking injunctive relief and the imposition of civil penalties for violations of Section 112(r) of the Clean Air Act in connection with three of Harcros' chemical manufacturing, repacking, blending, storage, and distribution facilities located in Shreveport, Louisana, Kansas City, Kansas, and Bessemer, Alabama. The proposed Consent Decree concerns those facilities and twenty-six additional Harcros facilities located in the States of Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, North Carolina, Tennessee, and Texas. The Consent Decree requires Harcros to audit its facilities for compliance with Section 112(r) of the Clean Air Act and to correct any discovered violations of these requirements. The Consent Decree also requires Harcros to pay a cash civil penalty of $950,000 for the violations alleged in the complaint, as well as for violations of Section 112(r) expected to be uncovered at other facilities. The Consent Decree also requires Harcros to perform a Supplemental Environmental Project to enhance its fire-prevention capability at eight of its facilities.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Harcros Chemicals Inc.,* D.J. Ref. No. 90–5–2–1–11461. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.75.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–16369 Filed 8–2–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

187th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 187th meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on August 22–24, 2017.

The three-day meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 in Room N3437–C. The meeting will run from 9:00 a.m. to approximately 5:30 p.m. on August 22–23, with a one hour break for lunch each day, and from 9:00 a.m. to 12:00 p.m. on August 24. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the morning of August 24, subject to change.

The Advisory Council will study the following topics: (1) Reducing the Burden and Increasing the Effectiveness of Mandated Disclosures with respect to Employment-Based Health Benefit Plans in the Private Sector, and (2) Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors. The Council will hear testimony on both topics on August 22 and 23. It will continue with discussions of its topics on August 24. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 35 copies on or before August 15, 2017, to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210.

Statements also may be submitted as email attachments in word processing or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before August 15 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Written statements submitted by invited witnesses will be posted on the Advisory Council page of the EBSA Web site, without change, and can be retrieved by most Internet search engines.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 15.

Signed at Washington, DC, this 28th day of July, 2017.

Timothy D. Hauser,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration.

[FR Doc. 2017–16361 Filed 8–2–17; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Form ETA–9035, Labor Condition Application for Nonimmigrant Workers (OMB Control Number 1205–0310), Revision of a Currently Approved Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight in the H–1B, H–1B1, and E–3 nonimmigrant visa application processes, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the extension of the approval for the information collection, Office of Management and Budget (OMB) Control Number 1205–0310, containing Form ETA–9035—*Labor Condition Application for Nonimmigrant Workers;* Form ETA–9035E—*Labor Condition Application for Nonimmigrants Workers* (electronic version); Form ETA–9035CP—*General Instructions for the 9035 & 9035E;* Wage and Hour Division (WHD) Form WH–4—*Nonimmigrant Worker Information Form; and other H–1B related information collection and retention requirements,* which expire May 31, 2018. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

The Form ETA–9035/9035E must be used by employers seeking to employ a foreign worker in a specialty occupation or as a fashion model of distinguished merit and ability under the H–1B, H–1B1, and E–3 nonimmigrant visa classifications. The Form ETA–9035/9035E must be certified by the DOL before the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) may approve a petition authorizing admission of a foreign worker under the visa classification. The Form WH–4 is used to request that DOL's Wage and Hour Division initiate an investigation related to alleged violations of H–1B, H–1B1 and E–3 program requirements.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 2, 2017.

ADDRESSES: Submit written comments to William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box# 12–200, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–513–7350 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–513–7395. Email: *ETA.OFLC.Forms@dol.gov* subject line: ETA–9035. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t), and 1184(c)). The Department and the Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I, and 8 CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the United States (U.S.) to perform work in a specialty occupation or as a fashion model unless the U.S. employer makes certain attestations to the Secretary of Labor (Secretary). Those attestations include that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the employer will offer a wage that is at least the higher of the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has provided notice of the filing of the LCA. In addition, further attestations are generally required for H–1B dependent employers and willful violators. The current ICR expires May 31, 2018. The Department is seeking revisions to the Form 9035/9035E and Form 9035CP Instructions in order to streamline parts of the current information collection to assist the regulated community with form completion; provide greater clarity of existing employer obligations under the programs; and promote greater program transparency by collecting additional information on the employment of temporary nonimmigrant workers by U.S. employers. The Department is also seeking revisions to the Form WH–4 in order to provide the form in a LIVECYCLE document to improve accessibility and compliance with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the

Workforce Investment Act of 1998 (Pub. L. 105–220), August 7, 1998 SEC. 508; assist the regulated community with form completion; and collect additional information to facilitate complainant communication for the enforcement of Forms 9035 and 9035E.

II. Review Focus

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to labor condition applications that are used in the H–1B, H–1B1, and E–3 visa programs and allow employers to bring foreign labor to the U.S. on a temporary basis.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0310. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2018. The DOL seeks to extend PRA authorization for this revised information collection for three (3) more years.

In the past the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal governments, or the Federal government. The Secretary uses the collected information to determine if employers are meeting their statutory and regulatory obligations.

A. General

Title: Labor Condition Application for H–1B, H–1B1, and E–3 Non-immigrants.

Type of Review: Revision.

OMB Number: 1205–0310.

B. ETA Forms and Information Collections

Title(s): Labor Condition Application for Nonimmigrant Workers, and *General Instructions for the 9035 & 9035E.*

Affected Public: Private Sector (businesses or other for-profits and not-for-profit institutions) and State, Local, and Tribal Governments.

Form(s): ETA forms ETA–9035, ETA–9035E, and ETA–9035CP.

Total Annual Respondents: 569,260.

Annual Frequency: On occasion.

Total Annual Responses: One per respondent.

Average Time per Response: 1.25 hours for forms ETA–9035/9035E, Appendix A (0.33 hour), and ETA–9035CP.

For other steps conducted:

- Documentation of Corporate Identity—1 hour
- H–1B Employer's Only—Determination of H–1B Dependency—0.5 hour
- H–1B Employer's Only—Determination of H–1B Dependency-Document Retention—0.05 hour
- List of Exempt H–1B Employees in Public Access File—0.25 hour
- Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite—0.166 hour (x5 times annually)
- Offers of Employment to Displaced U.S. Workers—0.33 hour
- Documentation of U.S. Worker Recruitment—0.33 hour
- Documentation of Fringe Benefits—1.5 hour
- Documentation of Fringe Benefits for Multinational Employers—0.5 hour
- Wage Recordkeeping requirements Applicable to Employers of H–1B Nonimmigrants—2.5 hour

Estimated Total Annual Burden Hours: 910,844.

Total Annual Burden Cost for Respondents: $53,171,155.

C. WHD Form

Title(s): Nonimmigrant Worker Information Form.

Affected Public: Individuals or Households.

Form(s): WH–4.

Total Annual Respondents: 225.

Annual Frequency: Once.

Total Annual Responses: 225.

Average Time per Response: 0.333 hours.

Estimated Total Annual Burden Hours: 75.

Total Annual Burden Cost for Respondents: $4330.20.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to disclose private and/or sensitive information (*e.g.,* Social Security Numbers or confidential business information).

Byron Zuidema,

Deputy Assistant Secretary for Employment and Training Administration, Department of Labor.

[FR Doc. 2017–16293 Filed 8–2–17; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Revision to Existing Approved Collection; Comment Request

AGENCY: Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of

collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is is soliciting comments concerning the proposed collection: Claim for Compensation (CA–7); Authorization for Examination and/or Treatment (CA–16); Duty Status Report (CA–17); Attending Physician's Report (CA–20); Request for the Services of an Attendant (CA–1090); Referral to a Medical Specialist (CA–1305); OWCP Requirements for Audiological Examination (CA–1087); Referral for a Complete Audiologic and Otologic Examination (CA–1331); Outline for Audiologic Examination (CA–1332); Work Capacity Evaluation, Psychiatric/Psychological Conditions (OWCP–5a); Work Capacity Evaluation, Cardiovascular/Pulmonary Conditions (OWCP–5b); and Work Capacity Evaluation, Musculoskeletal Conditions (OWCP–5c). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 2, 2017.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210; by fax to (202) 354–9647; or by Email to *ferguson.yoon@dol.gov*. Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* The statute provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. The Act outlines the elements of pay which are to be included in an individual's pay rate, and sets forth various other criteria for determining eligibility to and the amount of benefits, including: augmentation of basic compensation for individuals with qualifying dependents; a requirement to report any earnings during a period that compensation is claimed; a prohibition against concurrent receipt of FECA benefits and benefits from OPM or certain VA benefits; a mandate that money collected from a liable third party found responsible for the injury for which compensation has been paid is applied to benefits paid or payable. This information collection is currently approved for use through January 31, 2018. This ICR has been classified as a revision, because of a change to the CA–16. As DFEC is focusing more on program integrity issues, in particular medical billing, and to strengthen efforts to reduce potential fraud and abuse, this form is intimately tied to those efforts and DFEC would like to incorporate recent and upcoming policy changes (*e.g.,* new guidance/forms for compound and opioid medications—OMB 1240–0055). The proposed revisions provide more clarification regarding who may be authorized to initiate the CA–16 and who is authorized to provide medical treatment, to include qualifications and definitions of these authorization officials. Further clarification is provided regarding non-authorization for compound medication and the requirements to be enrolled with our Medical Bill Processing Contractor to receive payments for services rendered. Where revisions were made, Instructions were expanded to provide explanation.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks a revision in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Revision.

Agency: Office of Workers' Compensation Programs.

Title: FECA medical Reports, Claim for Compensation.

OMB Number: 1240–0046.

Agency Number: CA–7; CA–16; CA–17; CA–20; CA–1090; CA–1305; CA–1087; CA–1331; CA–1332; OWCP–5a; OWCP–5b; and OWCP–5c.

Affected Public: Individuals or households; Business or other for-profit; Federal Government previously approved.

Total Respondents: 282,353.

Form	Time to complete (min)	Number of responses	Hours burden
CA–7	13	500	120
CA–16	5	29,519	2,460
CA–17	5	182,793	15,233
CA–20	5	56,394	4,700
CA–1090	10	234	39
CA–1305	20	136	45
CA–1331/CA–1087*	5	1,062	89
CA–1332	30	30	6
OWCP–5's	15	11,651	2,913
Totals	.....	282,353	25,605

* Responses and hours associated with Form CA–1087 are included in the estimates for the Form CA–1331. The Form CA–1087 is attached to the Form CA–1331.

Total Annual Responses: 232,353.

Average Time per Response: 5 minutes–30 minutes.

Estimated Total Burden Hours: 25,605.

Frequency: As Needed.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $110,118.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 14, 2017.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2017–16320 Filed 8–2–17; 8:45 am]

BILLING CODE 4510–CH–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0219]

Information Collection: NRC Form 536, ''Operator Licensing Examination Data''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 536, ''Operator Licensing Examination Data.''

DATES: Submit comments by September 5, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0219 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0219.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML17135A262. The supporting statement is available in ADAMS under Accession No. ML17135A267.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2016–0219 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 536, ''Operator Licensing Examination Data.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 15, 2017, (82 FR 13874).

1. The title of the information collection: NRC Form 536, ''Operator Licensing Examination Data.''

2. OMB approval number: 3150–0131.

3. Type of submission: Extension.

4. The form number if applicable: NRC Form 536.

5. How often the collection is required or requested: Annually.

6. Who will be required or asked to respond: (a) All holders of operating licenses for nuclear power reactors under the provision of part 50 of title 10 of the *Code of Federal Regulations (*10 CFR*),* ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel; and

(b) All holders of, or applicants for, a limited work authorization, early site permit, or combined licenses issued under 10 CFR part 52, ''Licenses, Certifications and Approval for Nuclear Power Plants.''

7. The estimated number of annual responses: 100.

8. The estimated number of annual respondents: 100.

9. An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 75 (0.75 hour per form x 100).

10. Abstract: The NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations; (2) the estimated dates of the examinations, and (3) if the examinations will be facility developed or NRC developed. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear power industry.

Dated at Rockville, Maryland, this 28th day of July, 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–16336 Filed 8–2–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–162 and CP2017–227; MC2017–163 and CP2017–228; MC2017–164 and CP2017–229; CP2017–230]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 7, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–162 and CP2017–227; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 336 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* August 7, 2017.

2. *Docket No(s).:* MC2017–163 and CP2017–228; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 337 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* August 7, 2017.

3. *Docket No(s).:* MC2017–164 and CP2017–229; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 49 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* August 7, 2017.

4. *Docket No(s).:* CP2017–230; *Filing Title:* Notice of the United States Postal Service of Changes in Rates of General Applicability for a Competitive Product, Established in Governors' Decision No. 16–9; *Filing Acceptance Date:* July 28, 2017; *Filing Authority:* 39 U.S.C. 3633 and 39 CFR 3015.2; *Public Representative:* Katalin K. Clendenin; *Comments Due:* August 7, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–16348 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–160 and CP2017–225; MC2017–161 and CP2017–226]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–160 and CP2017–225; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 48 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Matthew R. Ashford; *Comments Due:* August 4, 2017.

2. *Docket No(s).:* MC2017–161 and CP2017–226; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 335 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Matthew R. Ashford; *Comments Due:* August 4, 2017.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2017–16329 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 28, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 49 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–164, CP2017–229.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–16315 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 28, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 337 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–163, CP2017–228.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–16309 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 335 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–161, CP2017–226.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–16307 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for First-Class Package Service Retail parcels, a new price category within the competitive product list.

SUMMARY: This notice sets forth changes in rates of general applicability for a new price category within the competitive product list.

DATES: Date of notice required under 39 U.S.C. 3632(b)(2): August 3, 2017.

FOR FURTHER INFORMATION CONTACT: John F. Rosato, 202–268–2990.

SUPPLEMENTARY INFORMATION: On December 5, 2016, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for a product that the Postal Service planned to transfer from the market dominant product list to the competitive product list, pending a final determination from the Postal Regulatory Commission (Commission) approving the transfer. On July 20, 2017, in Order No. 4009, the Commission approved the transfer of First-Class Mail Parcels Retail to the competitive product list as a new price category within First-Class Package Service, conditional on the Postal Service providing pricing for the transferred product. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2). Pursuant to the Notice of the United States Postal Service of Changes in Rates of General Applicability for a Competitive Product, Established in Governors' Decision No. 16–9 (Postal Regulatory Commission Docket No. CP2017–230), the new prices will be implemented on September 3, 2017.

Stanley F. Mires,

Attorney, Federal Compliance.

Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 16–9)

December 5, 2016

Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), I establish price changes for the Postal Service's shipping services (competitive products), specifically for First-Class Package Service. The price changes are described generally below, with a schedule of the new prices in the attachment.

If management is given the authority by the Postal Regulatory Commission to effectuate a transfer of First-Class Mail Retail parcels to the competitive product list, I hereby authorize the attached prices for the new First-Class Package Service Retail parcels price category. These changes reflect a 9.9 percent average increase over the prices in effect for First-Class Mail Retail parcels, as of January 22, 2017. I further authorize any additional conforming Mail Classification Schedule changes that may be necessary to implement the transfer.

The changes I establish should enable each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 CFR § 3015.7(c), requires competitive products collectively to contribute a minimum of 5.5 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. § 3633(a)(1)). I therefore find that the new prices are in accordance with 39 U.S.C. §§ 3632–3633 and 39 CFR § 3015.2.

Order

The changes in prices set forth herein shall be effective thirty (30) days after management has filed appropriate notice of these changes with the Postal Regulatory Commission (''Commission''). I direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. § 3632(b)(2), and direct management to file with the Commission appropriate notice of these changes, unless this decision has been superseded by a subsequent decision. Further, this decision may be rescinded in the event any new Governor is confirmed by the Senate prior to the filing of the notice of adjustment with the Commission that is authorized herein, and a majority of Governors then in office vote to do so.

By The Governors:

/s/

James H. Bilbray

Chairman, Temporary Emergency Committee of the Board of Governors

Attachment to Governors' Decision No. 16–9

MAIL CLASSIFICATION CHANGES

Part B

Competitive Products

* * * * *

2125 First-Class Package Service

* * * * *

2125.6 Prices

* * * * *

RETAIL [1]

Maximum Weight (ounces)	*Single-Piece ($)*
1	*$3.00*
2	*$3.00*
3	*$3.00*
4	*$3.00*
5	*$3.16*
6	*$3.32*
7	*$3.48*
8	*$3.64*
9	*$3.80*
10	*$3.96*
11	*$4.19*
12	*$4.36*
13	*$4.53*

Notes

1. A handling charge of $0.01 per piece applies to foreign-origin, inbound direct entry mail tendered by foreign postal operators, subject to the terms of an authorization arrangement.

* * * * *

[FR Doc. 2017–16328 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 28, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 336 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2017–162, CP2017–227.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–16321 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 3, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 48 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–160, CP2017–225.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–16317 Filed 8–2–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81255; File No. SR–FICC–2017–018]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees in the Mortgage-Backed Securities Division Clearing Rules and the EPN Rules

July 28, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2017, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

On July 31, 2017, FICC will implement proposed rule change SR–FICC–2017–012 (''Rule Filing 2017–012'').[5] Rule Filing 2017–012 will amend the Mortgage-Backed Securities Division Clearing Rules (the ''MBSD Rules'') to (1) move the time that FICC novates and treats itself as the settlement counterparty for certain transactions, (2) guarantee and novate trades with stipulations (''Stipulated Trades''), and (3) establish new processes that promote operational efficiencies for Clearing Members.[6] In connection with Rule Filing 2017–012, FICC is proposing with this filing to amend the fees in the MBSD Rules and the EPN Rules (the ''EPN Rules'') as further described below.[7] The changes proposed in this filing would become effective on August 1, 2017, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 31, 2017, FICC will amend the MBSD Rules to (1) move the time that FICC novates and treats itself as the settlement counterparty for certain transactions, (2) guarantee and novate trades with stipulations (''Stipulated Trades''), and (3) establish new processes that promote operational efficiencies for Clearing Members.[8] In connection with Rule Filing 2017–012, FICC is proposing with this filing to amend the fees in the MBSD Rules and the EPN Rules as further described below. The changes proposed in this filing would become effective on August 1, 2017, as described below.

I. Proposed Changes to the MBSD Rules

FICC is proposing to amend the fees in the MBSD Rules' *Schedule of Charges Broker Account Group* as listed below.

1. The *Account Maintenance* section would be amended to eliminate the ''Option Account'' fee. This change is being proposed because FICC will eliminate the Broker ''give-up'' process from the MBSD Rules in connection with Rule Filing 2017–012.[9] Because the submission of Broker Give-Up Trades (which includes Option Contracts) will be eliminated, the associated account maintenance fee for Option Accounts will be eliminated.

2. The *Trade Processing* section would be amended to change the name of the ''Give-Up Trade Creates'' fee to the ''Trade Creates'' fee. This change is being proposed because FICC will eliminate the Broker ''give-up'' process from the MBSD Rules in connection with Rule Filing 2017–012.[10]

3. The *Processing Fees* section would be amended to increase the ''Trade Input Non-Compliance'' fee to $1,000 a month per Account from $500 a month per Account. This change is being proposed in order to encourage Clearing Members to submit transactions into FICC's Real-Time Trade Matching (''RTTM'') system in a timely manner. The timely submission of transactions is especially important because FICC will novate and become the settlement counterparty to all transactions (other than Option Contracts) pursuant to Rule Filing 2017–012.[11]

FICC is proposing to amend the fees in the MBSD Rules' *Schedule of Charges Dealer Account Group* as listed below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Securities Exchange Act Release No. 81051 (June 29, 2017), 82 FR 31378 (July 6, 2017) (SR–FICC–2017–012) (''Approval Order'').

[6] *Id.* In connection with the changes in Rule Filing 2017–012, FICC will implement new processes that promote operational efficiencies for Clearing Members. The full text of Rule Filing 2017–012 may be obtained by visiting DTCC's Web site *at http://www.dtcc.com/legal/sec-rule-filings.*

[7] Capitalized terms not defined herein are defined in the MBSD Rules and the EPN Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[8] *See* Approval Order, *supra* note 5.

[9] *See* Approval Order, 82 FR at 31382.

[10] *Id.*

[11] *See* Approval Order, *supra* note 5.

1. The *Trade Processing* section would be amended to modify the tiering levels and the associated fees assigned to each tier for SBO-Destined Trades.[12] In connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department.[13] As a result, these proposed fee changes would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process.

Current charge	Total par amount traded per month	Proposed charge	Total par amount traded per month
$1.93/MM	1,000,000–2,500,000,000	$2.00/MM	01–2,500,000,000.
$1.77/MM	2,501,000,000–5,000,000,000	$1.58/MM	2,500,000,001–7,500,000,000.
$1.60/MM	5,001,000,000–7,500,000,000	$1.39/MM	7,500,000,001–12,500,000,000.
$1.49/MM	7,501,000,000–10,000,000,000	$1.19/MM	12,500,000,001–300,000,000,000.
$1.32/MM	10,001,000,000–12,500,000,000	$1.16/MM	300,000,000,001 and over.
$1.14/MM	12,501 and over.		

2. The *Trade Processing* section would be amended to increase the fee for ''TBA Netting Balance Orders'' to $1.00/MM from $0.75/MM. In connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department. As a result, this proposed fee change would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process. FICC is also proposing to amend this section to eliminate the applicability of this fee to SBOO Trades because this trade type will be eliminated in connection with Rule Filing 2017–012.[14]

3. The *Trade Processing* section would be amended to establish fees for Stipulated Trades, which will be a new trade type eligible for processing at MBSD pursuant to Rule Filing 2017–012.[15] The fees for Stipulated Trades would be the same fees that are in place for the processing of Trade-for-Trade Transactions [16] and Specified Pool Trades.[17] FICC would amend the heading of this section to clarify that the fees would be applicable to Trade-for Trade-Transactions, Specified Pool Trades and Stipulated Trades.

4. The *Trade Processing* section would be amended to increase the ''Trade Creates'' fee for Trade-for-Trade Transactions and Specified Pool Trades to $1.16/MM from $1.00/MM. This increased fee would also apply to Stipulated Trades. In connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department. As a result, this proposed fee change would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process.

5. FICC is proposing to include two new fees in connection with the proposed Do Not Allocate (''DNA'') process.[18] One fee would be in the amount of $1.25/MM per transaction in connection with a Clearing Member's request to include eligible trades in the DNA process (such request would be referred to as a ''DNA Request''). The second fee would be in the amount of $4.00 per transaction in connection with a Clearing Member's request to cancel its DNA Request (such cancellation would be referred to as a ''DNA Request Cancel'').

6. *The Pool Netting Fees* section would be amended to increase the fee for ''Matched Pool Instructs'' to $1.00 per side from $0.60 per side. In connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department. As a result, this proposed fee change would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process.

7. The *Processing Fees* section would be amended to increase the ''Trade Input Non-Compliance'' fee to $1,000 a month per Account from $500 a month per Account. This change is being proposed in order to encourage Clearing Members to submit transactions into FICC's RTTM system in a timely manner. The timely submission of transactions is especially important because FICC will novate and become the settlement counterparty to all transactions (other than Option Contracts) pursuant to Rule Filing 2017–012.[19]

8. The *Notification of Settlement* fees would be eliminated because FICC will eliminate the Notification of Settlement process from the MBSD Rules in connection with Rule Filing 2017–012.[20]

II. Proposed Changes to the EPN Rules

FICC is proposing to amend the ''Message Processing Fees'' in the *EPN Schedule of Charges* as listed below. In connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department. As a result, these proposed fee changes would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process.

[12] Pursuant to the MBSD Rules, the term ''SBO-Destined Trade'' means a TBA transaction in the Clearing System intended for TBA Netting in accordance with the provisions of the MBSD Rules. *See* MBSD Rule 1, *supra* note 7.

[13] The MBSD allocations department will monitor the transmission of pool information that is used to satisfy to-be-announced transactions. The team will also handle any exception processing that occurs.

[14] *See* Approval Order, 82 FR at 31380.

[15] *See* Approval Order, 82 FR at 31381.

[16] Pursuant to the MBSD Rules, the term ''Trade-for-Trade Transaction'' means a TBA Transaction submitted to MBSD not intended for TBA Netting in accordance with the provisions of the MBSD Rules. *See* MBSD Rule 1, *supra* note 7.

[17] Pursuant to the MBSD Rules, the term ''Specified Pool Trade'' means a trade in which all required pool data, including the pool number to be delivered on the Contractual Settlement Date, are agreed upon by Members at the time of execution. *See* MBSD Rule 1, *supra* note 7.

[18] As described in Rule Filing 2017–012, the DNA process will permit offsets among SBON Trades and Trade-for-Trade Transactions. *See* Approval Order, 82 FR at 31381.

[19] *See* Approval Order, *supra* note 5.

[20] *See* Approval Order, 82 FR at 31381.

EPN FEE SCHEDULE

Fee descriptions	Current charge	Message submission times	New charge	Message submission times
Messaging Processing Fees				
ON Send	$0.17	Per MM Current Face (opening of business to 1:00 p.m.).	$0.19	Per MM Current Face (opening of business to 1:00 p.m.).
	0.86	Per MM Current Face (1:00 p.m. to 2:00 p.m.).	0.95	Per MM Current Face (1:00 p.m. to 2:00 p.m.).
	1.73	Per MM Current Face (2:00 p.m. to 3:00 p.m.).	1.90	Per MM Current Face (2:00 p.m. to 3:00 p.m.).
	1.44	Per MM Current Face (3:00 p.m. to close of business).	1.58	Per MM Current Face (3:00 p.m. to close of business).
ON Receive	0.46	Per MM Current Face (opening of business to 1:00 p.m.).	0.51	Per MM Current Face (opening of business to 1:00 p.m.).
	0.23	Per MM Current Face (1:00 p.m. to 2:00 p.m.).	0.26	Per MM Current Face (1:00 p.m. to 2:00 p.m.).
	0.23	Per MM Current Face (2:00 p.m. to 3:00 p.m.).	0.26	Per MM Current Face (2:00 p.m. to 3:00 p.m.).
Cancel/Correct Send	0.17	Per MM Current Face (opening of business to 11:00 a.m.).	0.19	Per MM Current Face (opening of business to 11:00 a.m.).
	0.86	Per MM Current Face (11:00 a.m. to 12:00 p.m.).	0.95	Per MM Current Face (11:00 a.m. to 12:00 p.m.).
	1.73	Per MM Current Face (12:00 p.m. to 12:15 p.m.).	1.90	Per MM Current Face (12:00 p.m. to 12:15 p.m.).
	0.17	Per MM Current Face (12:15 p.m. to end of day).	0.19	Per MM Current Face (12:15 p.m. to end of day).

III. Delayed Implementation of the Proposed Rule Change

The proposed changes would become effective on August 1, 2017.[21] Upon FICC's submission of this proposed rule change to the Commission, FICC would add a legend to the MBSD Rules and the EPN Rules, as applicable, to state that the specified changes have been filed with the Commission for immediate effectiveness, however, such changes are not yet implemented and to provide the date such changes would become implemented. The legend would also include the file number of the proposed rule change and would state that once implemented, the legend would automatically be removed from the MBSD Rules and EPN Rules as applicable.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the MBSD Rules and the EPN Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[22] FICC believes that the proposed (1) changes to the MBSD Trade Processing fees, MBSD Pool Netting fees and the EPN Message Processing fees (collectively, the ''Processing Fees''), and (2) new fees for Stipulated Trades submissions and the DNA process (collectively, the ''New Fees'') are equitably allocated among Clearing Members and EPN Users, as applicable, because the fees would continue to be based on each Clearing Member's utilization of MBSD's services. Specifically, each Clearing Member or EPN User would be charged based on the volume of transactions and/or messages submitted to MBSD.

FICC believes that the proposed changes to the Processing Fees and the New Fees are reasonable because the proposed fee changes would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process. Additionally, MBSD's new allocation department will increase MBSD's operational cost. FICC believes that the proposed fee changes are reasonable because the fees would align with the cost of providing the benefits associated with the implementation of Rule Filing 2017–012.[23]

FICC believes that its proposal to increase the *Trade Input Non-Compliance* fee for Brokers and Dealers are reasonable because doubling the existing fee would be sufficient to encourage Clearing Members to submit transactions in a timely manner. This is especially important because FICC will novate and become the settlement counterparty to all transactions (except Option Contracts) at trade comparison pursuant to Rule Filing 2017–012.

FICC believes that the proposal to increase the *Trade Input Non-Compliance* fee for Brokers and Dealers are equitably allocated because the same fee would be applicable to the Accounts of all Clearing Members who do not submit transactions on a timely basis.

Therefore, FICC believes the proposed fees are consistent with the requirements of Section 17A(b)(3)(D) of the Act.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed (1) changes to the Processing Fees and (2) new fee for Stipulated Trades may impose a burden on competition. However, FICC believes any burden on competition that may result from the proposed fees increases would be

[21] FICC will implement Rule Filing 2017–012 on July 31, 2017, however, the proposed fee changes would be implemented on August 1, 2017 because the billing cycle begins on the first day of each month.

[22] 15 U.S.C. 78q–1(b)(3)(D).

[23] These benefits include the following: (1) The submission of Pool Instructs by Clearing Members will become optional because FICC would be permitted to submit on behalf Clearing Members; (2) Clearing Members will no longer be required to fulfill Notification of Settlement obligations because transactions (except Option Contracts) would settle with FICC; (3) Clearing Members will have the ability to exclude TBA Obligations from the pool allocation process, netting, and securities settlement through the DNA process; (4) Clearing Members will have the ability to net their pools via the Expanded Pool Netting process in the event that such Clearing Members miss the established deadline for the initial Pool Netting process; (5) Dealer Netting Members will remain anonymous with the elimination of the ''give-up'' process for Brokered Transactions; (6) Clearing Members will be allowed to submit SBO-Destined Trades in all trade sizes; and (7) Clearing Members will be allowed to submit Stipulated Trades as a new trade type. *See* Approval Order, 82 FR at 31378.

necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[24]

Specifically, FICC believes that the proposed (1) changes to the Processing Fees and (2) new fee for Stipulated Trades are necessary because the fees would provide FICC with the ability to achieve and maintain its operating margin. FICC believes that the proposed fee increases and the new fee for Stipulated Trades are appropriate because the fees would provide FICC with the ability to recover the cost of providing the services described in Rule Filing 2017–012. As discussed above, in connection with Rule Filing 2017–012, MBSD's processing cost will not change; however, MBSD's operational cost will increase because of MBSD's new allocation department. As a result, these proposed fee changes would offset the loss of revenue attributed to the decrease in transaction volumes processed through the Pool Netting System and the EPN Service due to the introduction of the DNA process and the removal of the Notification of Settlement process.

FICC believes that the proposed changes to increase the Trade Input Non-Compliance fee for Brokers and Dealers will not impact competition because Clearing Members could avoid these fees by submitting their transactions on a timely basis in accordance with the MBSD Rules.

FICC believes that the proposed change to eliminate the Option Account fees for Brokers and the Notification of Settlement fees will not impact competition because these fees are associated with processes that will be eliminated pursuant to Rule Filing 2017–012.

FICC believes that the proposed new fee for the DNA process will not impact competition because the DNA process is voluntary and Clearing Members could elect not to submit their transactions through the DNA process.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

[24] 15 U.S.C. 78q–1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 thereunder.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2017–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2017–018. 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 FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2017–018 and should be submitted on or before August 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2017–16297 Filed 8–2–17; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81256; File No. SR–NASDAQ–2017–077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter the Exchange's Fee Schedule for the Short Interest Report

July 28, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to alter the Exchange's fee schedule for the Short Interest Report at Rule 7022.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Nasdaq initially filed this proposal as SR–NASDAQ–2017–064 on June 29, 2017. Nasdaq withdrew that filing on July 13, 2017 and replaced it with SR–NASDAQ–2017–071. On July 25, 2017, Nasdaq withdrew that filing and replaced it with this filing.

at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to alter the fee schedule for the Short Interest Report at Rule 7022. The Exchange proposes to replace the current fee structure, which is based on the frequency of distribution, with a subscription service based on the number of Subscribers receiving that report. Nasdaq proposes these changes to: (i) Partially offset increases in Nasdaq's cost of producing the report; (ii) more accurately reflect the value of the product to purchasers by establishing fees based on the number of Subscribers receiving the report rather than frequency of distribution; and (iii) provide an incentive to distribute the report widely by offering reduced rates to Distributors with a proven record of disseminating data widely to professionals and members of the investing public.

Short Interest Report

The Short Interest Report is a summary of short interest positions for all Nasdaq-listed issues as reported by the Financial Industry Regulatory Authority (FINRA); it is designed to facilitate the distribution of short sale data to the media and assist investors and traders in developing risk-assessment tools and trading models for Nasdaq-listed issues. Reports are available on a semi-monthly basis on a secured FTP server.

Current Fee Structure

Fees for the Short Interest Report are set forth in Subsection C of Nasdaq Rule 7022(b), under the title Nasdaq Issues Summary Statistics.[4] Fees are divided into two schedules, depending upon whether the report is distributed more or less than once per month. Reports distributed once per month, quarter or year are charged as follows: $250 for 1–500 Subscribers; $300 for 501–999 Subscribers; $350 for 1,000–4,999 Subscribers; $400 for 5,000–9,999 Subscribers; and $500 for over 10,000 Subscribers. Reports distributed more often than once per month are charged $1,000 per month for unlimited internal distribution and $2,500 per month for unlimited external distribution.[5] In addition, an annual set of aged reports previously distributed more often than once a month is available for $3,000 for an unlimited number of subscribers.

Proposed Fee Structure

The proposed fee structure, set forth in revised Rule 7022(c),[6] establishes a flat fee of $500 per month for unlimited access to the Short Interest Report. Separate fees based on the frequency of distribution are removed, including fees for reports distributed once per month, quarter, or year, and fees for an annual set of aged reports previously distributed more often than once a month. Internal distribution fees remain the same at $1,000 per month.

External distribution fees are revised to reflect the number of Subscribers with access to the report, as follows: $2,500 for 1–499 Subscribers; $5,000 for 500–9,999 Subscribers; and $7,500 for 10,000 or more Subscribers or on an open Web site.

Distributors that serve a large number of external Subscribers will be offered reduced fees. Firms that purchase an enterprise license for Nasdaq Basic under Rule 7047(b)(5), an enterprise license for depth-of-book data under Rule 7023(c)(3), or that pay $5,000 or more in monthly usage fees for Nasdaq Last Sale (NLS) or NLS Plus under Rule 7039 (excluding distributor fees under Rule 7039(c)), will be eligible for a reduced rate of $1,500 per month for distribution to an unlimited number of external Subscribers or on an open Web site.[7] This fee is a reduction from the current flat fee of $2,500.[8]

These changes are proposed to: (i) Partially offset increases in Nasdaq's cost of producing the report; (ii) more accurately reflect the value of the product to purchasers by establishing fees based on the number of Subscribers receiving the report rather than frequency of distribution; and (iii) provide an incentive to distribute the report widely by offering reduced rates to Distributors with a proven record of disseminating data widely to professionals and members of the investing public.

The impetus for the proposed fee changes arose when FINRA increased its annual charges for receipt of short interest data effective January 1, 2017, resulting in an increase to Nasdaq's cost in producing the report. In response, the Exchange reviewed the Short Interest Report fee structure, and determined that fees should be based on the number of Subscribers receiving it, rather than the frequency of distribution. The Exchange proposes these revisions because the number of Subscribers is a better measure of the value of the report to both professionals and the investing public than the frequency of distribution. The Exchange also proposes to adjust the fee structure to encourage wider dissemination of the report by reducing fees for firms with a proven ability to disseminate information widely. This includes firms with a sufficiently large Subscriber base to purchase enterprise licenses for Nasdaq Basic and depth-of-book data, or that have demonstrated broad dissemination of Exchange data by

[4] The Short Interest Report is the only report currently distributed under the fee schedule for Nasdaq Summary Statistics set forth in Subsection C of Nasdaq Rule 7022(b). *See* Securities Exchange Act Release 73662 at n.3 (November 20, 2014), 79 FR 70600 (November 26, 2014) (SR–NASDAQ–2014–106); Securities Exchange Act Release 72911 (August 25, 2014), 79 FR 51628 (August 29, 2014) (SR–NASDAQ–2014–086); Securities Exchange Act Release 68636 (January 11, 2013), 78 FR 3940 (January 17, 2013) (SR–NASDAQ–2013–009).

[5] Internal distribution is defined as distribution within the recipient firm, while external distribution is defined as distribution both inside and outside of the firm.

[6] The Exchange proposes to move the fee schedule for the report from Subsection C of Rule 7022(b) to Rule 7022(c) because the proposed fees are designed specifically for the Short Interest Report. Subsection C of Nasdaq Rule 7022(b) will be reserved until needed for a new report that falls within that category of information. In 2013, the Exchange moved the Daily List and Fundamental Data information in a similar fashion from Nasdaq Issues Summary Statistics into Rule 7022(d), which will be re-designated as Rule 7022(e) by this rule change. *See* Securities Exchange Act Release 68636 (January 11, 2013), 78 FR 3940 (January 17, 2013) (SR–NASDAQ–2013–009).

[7] The Exchange offers a reduced rate for the largest distributors of a number of its market data products. For example, the Exchange establishes a maximum fee of $41,500 per month for NLS for Nasdaq and NLS for NYSE/NYSE MKT without regard to usage in Rule 7039(b). Also, firms that purchase enterprise licenses under Rules 7023(c)(3) or Rule 7047(b)(5) may pay less for the same service than firms that elect not to purchase an enterprise license. As explained in the discussion of statutory basis, offering discounts to firms that elect to purchase an enterprise license or that otherwise pay large amounts in market data fees is an equitable allocation of reasonable dues, fees, and other charges.

[8] The Exchange also corrects a typographical error in the fee schedule by replacing ''4999'' with ''4,999.''

paying over $5,000 per month in monthly usage fees for NLS or NLS Plus.

The proposed fees for the Short Interest Report are optional in that they apply only to firms that elect to purchase these products. The proposed changes do not impact the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed fee increase reasonably reflects the value that members and sponsored customers receive for the service, and a reduced rate for large Distributors avoids placing a disproportionate financial burden on Distributors that have purchased enterprise licenses to control costs or that have already expended substantial amounts to distribute certain Nasdaq market data products intended for the general investing public.

The Exchange proposes charging the same $500 subscription fee and $1,000 internal distribution fee to all Distributors.

External distribution fees will be based on a tiered fee structure that depends on the number of Subscribers, with a reduced rate for Distributors that purchase certain enterprise licenses or that pay more than a certain amount for NLS or NLS Plus. Firms with between 1 and 499 Subscribers will continue to pay $2,500, while firms with more Subscribers pay either $5,000 or $7,500, depending on the number of Subscribers. The tiered structure for external distribution is an equitable allocation of reasonable dues, fees and other charges because the higher fees are commensurate with the higher value of the report for Distributors with more Subscribers.

The reduced rate for Distributors that have elected to purchase an enterprise license for the distribution of Nasdaq depth-of-book products or Nasdaq Basic, or that pay substantial fees for the distribution of NLS or NLS Plus, is also an equitable allocation of reasonable dues, fees and other charges. Enterprise licenses are a frequently-employed method for allowing Distributors to control costs, and purchasing such licenses may, from time to time, result in the enterprise license purchaser paying less for the same service than a Distributor that elected not to purchase such a license. This is an equitable allocation of reasonable dues, fees and other charges because Distributors have a choice of whether or not to purchase the enterprise license.

The Exchange also proposes a fee cap on short interest report fees for firms that pay over $5,000 per month in monthly usage fees for NLS or NLS Plus. This is analogous to the fee cap of $41,500 per month for NLS in Rule 7039(b). It is an equitable allocation of reasonable dues, fees and other charges because it avoids placing a disproportionate financial burden on Distributors that pay a substantial amount for distributing data to the general investing public by limiting the total amount that such Distributors are required to pay. This fee cap will be applied equally to all Distributors that reach the established level of fees for NLS or NLS Plus.

In adopting Regulation NMS,[11] the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Short Interest Report—which supplies data on short interest positions for all Nasdaq-listed issues as reported by the Financial Industry Regulatory Authority—is the type of market data product that the Commission envisioned when it adopted regulation NMS. The Commission concluded that Regulation NMS—deregulating the market in proprietary data—would further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[12]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In *NetCoalition* v. *Securities and Exchange Commission* [13] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[14] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [15] ''No one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [16]

Data products such as the Short Interest Report are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they provide. The need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.[17]

The proposed changes are consistent with Section 6(b)(5) of the Act. The proposed fees will reflect the value of the product by basing fees on the number of Subscribers receiving the report, and the reduced fees for certain large Distributors avoids allocating disproportionally high charges to Distributors that already expend substantial amounts to distribute certain Nasdaq products. The proposed changes would not permit unfair discrimination because the Exchange will apply the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[12] *Id.*

[13] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *See NetCoalition,* at 534–535.

[15] *Id.* at 537.

[16] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

same fee to all similarly-situated Distributors.

Fees for the Short Interest Report are optional in that they apply only to firms that elect to purchase the product, which, like all proprietary data products, they may cancel at any time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Short Interest Report enhances competition by creating a fee structure that reflects the value of the report to both Distributors and Subscribers and encourages the dissemination of the report to professionals and the investing public.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[18] It is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and the BATS exchanges.

In this competitive environment, an ''excessive'' price for one product will have to be reflected in lower prices for other products sold by the Exchange, or otherwise the Exchange may experience a loss in sales that may adversely affect its profitability.

In this instance, the proposed rule change enhances competition by creating a fee structure that reflects the value of the report to both Distributors and Subscribers and encourages the dissemination of the report to professionals and the investing public. If the Short Interest Report were to become unattractive to members and sponsored firms, those firms would opt not to purchase the product, and it is likely that the Exchange will lose market share as a result. As such, the Exchange does not believe that the proposed changes will impair competition in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–077 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.

[18] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–NASDAQ–2017–077. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–077, and should be submitted on or before August 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2017–16298 Filed 8–2–17; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81252; File No. SR–MIAX–2017–36]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Type of MIAX Express Interface Port Known as a Purge Port, To Amend MIAX Options Rule 519C, Mass Cancellation of Trading Interest, To Adopt a New Purge Message, and To Amend Its Fee Schedule To Adopt Fees for Purge Ports

July 28, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2017, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 519C, Mass Cancellation of Trading Interest, to adopt new rule text to reflect the proposed Purge Port functionality, as well as to make clarifying changes to existing rule text to more accurately describe current functionality, and to reorganize the rule for ease of reference. The Exchange is also proposing to amend its Fee Schedule to adopt fees for Purge Ports.

The text of the proposed changes to Exchange Rule 519C is attached as Exhibit 5A. The proposed changes to the Fee Schedule are attached as Exhibit 5B. The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to offer Market Makers[3] that connect to the Exchange using the MIAX Express Interface (''MEI'')[4] a new type of connection port, named Purge Ports, to be used as dedicated ports for sending purge messages to the Exchange. The Exchange also proposes to amend its Fee Schedule to identify and adopt fees for Purge Ports. Finally, the Exchange proposes to amend Exchange Rule 519C, Mass Cancellation of Trading Interest, to adopt new rule text to reflect the proposed Purge Port functionality, as well as to make clarifying changes to existing rule text to more accurately describe current functionality, and to reorganize the rule for ease of reference.

Market Makers connect to the Exchange's System[5] via their assigned MEI ports. Currently, the Exchange offers Market Makers two different types of MEI port connections. The first is a Full Service Port[6] which supports all message types, and the other is a Limited Service Port[7] which provides slightly less functionality. The Exchange limits Market Makers to two (2) Full

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* MIAX Options Fee Schedule, Section 5)d)ii), footnote 26.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* MIAX Options Fee Schedule, Section 5)d)ii), footnote 27.

[7] Limited Service MEI Ports provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* MIAX Options Exchange Fee Schedule, Section 5)d)ii), footnote 28.

Service Ports and allows up to eight (8) Limited Service Ports per MIAX matching engine.[8]

The proposed Purge Ports are a new, optional, third type of MEI port dedicated solely to handling purge messages which would enable a Market Maker, by MPID, to remove all or a subset of its (i) quotations [9] in the System and block all or a subset of new inbound quotations from being received;[10] or (ii) Standard quotations [11] in the System and block all or a subset of new inbound Standard quotations from being received.[12] Sending a purge message pursuant to (ii) above will not remove or block eQuotes,[13] which are a specific type of quotation that allows the Market Maker to continue to provide targeted liquidity to the market and to interact with Public Customer [14] orders. When quotes have been purged pursuant to (i) or (ii) above,[15] the block will remain in effect until the Market Maker requests that the Exchange remove the block.

The purge messages described above may be sent via any type of MEI port, however, purge messages received on the proposed Purge Ports will be handled by the System in a way that ensures minimum possible latency (as Purge Ports solely process purge messages, as opposed to Full Service MEI Ports and Limited Service MEI Ports, which also process additional message types), thereby providing Market Makers with a faster, more efficient means to have their quotes removed from the System, which will provide Market Makers with an enhanced level of risk protection.

The proposed Purge Ports are designed to assist Market Makers in the management of, and risk control over, their quotes, particularly if the Market Maker is quoting a large number of options. For example, if a Market Maker detects market indications that may influence the direction or bias of its quotes, the Market Maker may use the proposed Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of options seamlessly to avoid unintended executions, while continuing to evaluate the direction of the market.

The Exchange also proposes to amend Section (5)(d)(ii) of its Fee Schedule to identify and adopt fees for Purge Ports. The Exchange currently assesses monthly MEI Port fees on Market Makers based upon the number of matching engines used by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per matching engine to which they connect.

The Exchange currently assesses the following MEI Port fees: (i) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) $10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (iii) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (v) $20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX.[16]

The Exchange also currently charges $100 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports.[17] Market Makers are limited to six (6) additional Limited Service MEI Ports per matching engine, for a total of eight (8) per matching engine.[18] The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center.[19]

With the introduction of Purge Ports, the Exchange proposes to amend Section (5)(d)(ii) of its Fee Schedule to provide that a Market Maker may request and be allocated two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port. (That is, a Market Maker must have a Full Service MEI Port connection to a matching engine in order to be eligible to receive Purge Ports with respect to that matching engine.) The Exchange proposes that, for each month in which the Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange will assess the Market Maker a flat fee of $1,500 per month, regardless of the number of actual Purge Ports allocated to the Market Maker. For example, a Market Maker (that requests Purge Ports) that connects to 10 matching engines would be allocated 20 Purge Ports, and would be charged $1,500 per month for use of those Purge Ports. A Market Maker (that requests Purge Ports) that connects to two (2) matching engines would be allocated four (4) Purge Ports, and would be charged $1,500 per month for use of those Purge Ports. The Exchange believes that charging Market Makers a flat monthly fee for use of the Purge Port service (regardless of the number of matching engines to which it connects and consequently regardless of the number of Purge Ports allocated to the Market Maker) is equitable, reasonable, and competitive with the fees charged by other exchanges that offer comparable purge port services, as most such exchanges charge per port, which results in monthly fees for purge port usage that are significantly higher than $1,500 per month for users with multiple purge ports.[20]

[8] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* MIAX Options Exchange Fee Schedule, Section 5)d)ii), footnote 29.

[9] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* Exchange Rule 100.

[10] A Market Maker currently has the ability to send a purge message to remove all or a subset of its quotations and block all or a subset of its new inbound quotations via its MEI port or by request to the Exchange's Help Desk. That ability is not changing with this proposal. What is changing with this proposal is the ability of a Market Maker to send that purge message via the proposed Purge Ports.

[11] A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any. *See* Exchange Rule 517(a)(1).

[12] The Exchange is introducing a new purge message that will remove all or a subset of a Market Maker's Standard quotations and block all or a subset of its new inbound Standard quotations. This request may only be sent electronically via a Market Maker's existing MEI port, or via the new proposed Purge Ports.

[13] An eQuote is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. *See* Exchange Rule 517(a)(2).

[14] The term ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[15] The Exchange notes that there is no mass cancellation functionality available to remove eQuotes only and block new inbound eQuotes.

[16] *See* MIAX Fee Schedule, Section (5)(d)(ii).

[17] *Id.*

[18] *See* MIAX Fee Schedule, footnote 30.

[19] *See* MIAX Fee Schedule, Section (5)(d)(ii).

[20] *See* Bats BXZ Options Exchange Fee Schedule, Options Logical Port Fees. Bats BZX assesses its members $750 per month per purge port. *See also* Nasdaq GEMX Schedule of Fees, Section IV.E. Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of

Continued

The Exchange also proposes to amend Exchange Rule 519C, Mass Cancellation of Trading Interest, to clarify current functionality. Specifically, the Exchange proposes to amend 519C(a) which reads, ''[a] Member [21] may remove all of its quotations and/or cancel all or any subset of its orders . . . .'' Accordingly, the Exchange is deleting the reference to quotations from this subsection (a) as quotations will now be addressed in subsection (b)(2). The Exchange proposes to amend the sentence to read, ''[a] Member may remove all or a subset of its orders . . . .'' The Exchange believes that, although there is no change to existing functionality addressed by subsection (a) of the rule, the proposed changes to subsection (a) provide greater clarity regarding the Exchange's risk protection functionality as it relates to the handling of orders. Additionally, the Exchange proposes to amend the rule to change the phrase, ''any subset'' to ''a subset'' to be consistent with proposed changes to section (b) of the Rule as described below.

The Exchange also proposes to amend Exchange Rule 519C(b) to reorganize the rule for ease of reference and to reflect the proposed Purge Port functionality. Specifically, the Exchange proposes to replace existing rule text pertaining to the removal of quotations and the cancellation of orders with a separate subsection for orders, proposed new subsection (b)(1); and a separate subsection for quotations, proposed new subsection (b)(2). The Exchange proposes to adopt new rule text under subsection (b)(1) to describe current functionality pertaining to orders which states, ''[a]n EEM may request that the Exchange cancel all or a subset of its orders in the System and block all new inbound orders.'' Under this proposal there is no change to the functionality available for Electronic Exchange Members (''EEMs'').[22] The Exchange believes that separately describing functionality available for EEMs and Market Makers provides greater clarity and specificity in the Exchange's rule.

Additionally, the Exchange proposes to adopt new rule text under subsection (b)(2) pertaining to quotations that provides that a Market Maker may remove all or a subset of its quotations and block all or a subset of its new inbound quotations by firm name or MPID.[23] This functionality currently exists on the Exchange and is not new, as a Market Maker may contact Exchange staff to have this action performed on their behalf or may submit a request to the Exchange's System via its MEI port. However, what is now being proposed pursuant to this filing is that this request may also be sent electronically to the Exchange's System via the new proposed Purge Ports.

The Exchange also proposes to adopt new rule text for new functionality being introduced in this proposal which provides that a Market Maker may remove all or a subset of its Standard quotations and block all or a subset of its new inbound Standard quotations by MPID. A Market Maker's eQuotes that are in the System will remain and the Market Maker will retain the ability to continue to send eQuotes to the System. This request may only be submitted to the Exchange's System electronically via the Market Maker's MEI port, either via its existing MEI ports, or via the new, proposed Purge Ports.

Lastly, the Exchange proposes to amend the rule text which currently states that, ''[t]he block will remain in effect until the Member requests Exchange staff to remove the block,'' by removing the word ''staff.'' To remove a block a Member may (i) send an electronic message directly into the Exchange's System; or (ii) contact Exchange staff. Additionally, a Market Maker may make a request to Exchange staff to remove quotations or may send a message directly to the Exchange's System via its MEI connection. The Exchange believes removing the word staff from the rule text more accurately encompasses the activity under both scenarios.

The Exchange notes that this proposal does not preclude Members from using the existing purge messages provided by either the MEI protocol or the cancel messages provided by the FIX protocol. Under the MEI protocol, Market Makers may request that all quotations for all underlyings, or for a specific underlying, be removed, and that new inbound quotations for all underlyings, or specific underlyings, be blocked. Under the FIX protocol, EEMs may also request that all, or a subset, of orders for an MPID, or all Day or GTC orders for an MPID, on the requesting session, be canceled.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular. The Exchange currently anticipates implementing the proposed rule change on August 3, 2017, subject to announcement of the actual date via Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(5) of the Act [25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] in that it promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market. Offering Market Makers designated Purge Ports would enhance their ability to manage quotes, quote traffic, and their quoting obligations,[27] which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports would foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purges only may encourage better use of dedicated ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. As Purge Ports are only available for purging and not for activities such as order or quote entry, the Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market

$12,500 for SQF Purge Ports and SQF Ports, applicable to market makers.

[21] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[22] The term ''Electronic Exchange Member'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[23] The term ''MPID'' means Market Participant Identifier. *See* Exchange Rule 519C.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

[27] *See* Exchange Rule 604.

participants are not subject to, which, in turn, benefits all market participants. The Exchange also notes that similar connectivity and functionality is offered by other exchanges.[28]

The Exchange notes that the proposed rule change will not relieve Market Makers of their continuous quoting obligations under Exchange Rule 604 and under Regulation NMS Rule 602.[29] Specifically, any interest that is executable against a Market Maker's quotes that is received by the Exchange's matching engine prior to the time that the purge message is received by the Exchange's matching engine will automatically execute at that price, up to the quote's size. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet its continuous quoting obligation each trading day.

In addition, the Exchange believes that the proposal removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing Market Makers with an additional purge message which allows them to remove their Standard quotes and blocks new inbound Standard quotes from being received yet preserves their ability to continue to provide liquidity to the market and interact with Public Customer orders via eQuotes. Further, the Exchange is clarifying existing rule text in Rule 519C to better describe current functionality available on the Exchange. The Exchange believes that clarifying current functionality promotes the protection of investors and the public interest by helping market participants better understand the risk protection tools available on the Exchange.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[30] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that its proposed fees should facilitate the ability of the Exchange to recoup some costs associated with Purge Ports as well as provide, maintain, and improve Purge Ports. The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of Members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected Members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. The Exchange also believes the proposed fee for the Purge Ports is equitable, reasonable, and competitive with the rates charged by competitor exchanges for similar functionality.[31]

The Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Market Makers. The proposed Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily request this service will be charged the same amount for the same service. All Market Makers have the option to select any connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

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 will enhance competition because it will enable it to offer similar connectivity and functionality as its competitor exchanges.[32] In addition, the proposed Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them.

The Exchange does not believe that allowing one type of Member (Market Makers) and not the other (EEMs) to utilize the proposed Purge Ports will impose any burden on competition that is not necessary or appropriate in furtherance of the Act, given the roles and responsibilities required by each type of Member. Market Makers connect to the Exchange via MEI while EEMs connect to the Exchange via FIX. Market Makers have a heightened obligation on the Exchange to maintain a continuous two-sided market, pursuant to Rule 604(e). As such, Market Makers have an obligation to provide continuous quotes for a large number of series. The volume of quotes that the Market Maker has in the market directly correlates to the Market Maker's risk exposure. EEMs, by contrast, can only send orders to the Exchange and do not have similar obligations. The Exchange believes providing Market Makers with an additional risk management tool will enhance competition as this tool is already offered by other exchanges.[33]

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposed rule change will enhance competition because it will enable it to offer similar connectivity and functionality as its competitor exchanges.[34] In addition, the proposed Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Market Makers may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Market Makers or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for the proposed Purge Ports and connectivity, in general, are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for

[28] *See* Securities Exchange Act Release Nos. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016) (SR–Phlx–2016–45); 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR–BatsBZX–2017–05); and 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017) (SR–ISE–2017–62).

[29] 17 CFR 242.602.

[30] 15 U.S.C. 78f(b)(4).

[31] *See supra* note 20.

[32] *See supra* note 28.

[33] *Id.*

[34] *Id.*

connectivity, including Purge Port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 19(b)(3)(A) of the Act [35] and Rule 19b–4(f)(6) [36] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [37] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. As noted above, the Exchange has proposed to announce an implementation date by Regulatory Circular, which the Exchange anticipates will be August 3, 2017. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to allow the enhanced risk protection for Market Makers offered by the proposed Purge Ports to go into effect without undue delay. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–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–MIAX–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–MIAX–2017–36 and should be submitted on or before August 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Brent J. Fields,

Secretary.

[FR Doc. 2017–16296 Filed 8–2–17; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81261; File No. SR–C2–2017–022]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.1, Days and Hours of Business, To Clarify the Trading Hours for Options on Index-Linked Exchangeable Notes

July 31, 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 July 18, 2017, C2 Options Exchange, 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] 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 purpose of this filing is to amend C2 Rule 6.1 to clarify the trading hours for options on Index-Linked

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Exchangeable Notes (''ETNs'').[5] The text of the proposed rule change is provided below.

(additions are *underlined;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.1. Days and Hours of Business

The hours during which option transactions may be made on the Exchange shall be from 8:30 a.m. Chicago Time to 3:00 p.m. Chicago Time except for option contracts on Index Options, *Index-Linked Exchangeable Notes,* Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts which may remain open for trading beyond 3:00 p.m. but in no case later than 3:15 p.m. Chicago Time, as designated by the Exchange.

* * * * *

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

The purpose of this filing is to amend C2 Rule 6.1 to clarify the trading hours for options on Index-Linked Exchangeable Notes (''ETNs'').[6] Specifically, the Exchange seeks to amend Rule 6.1 to provide that options on ETNs may be traded on the Exchange until 3:15 p.m. (CT) each business day. The Exchange notes that the proposed rule is based on NYSE MKT LLC (''NYSE MKT'') Rule 901NY Commentary .02.[7]

Rule 6.1 provides that the default trading hours on the Exchange are from 8:30 a.m. Chicago Time to 3:00 p.m. Chicago Time. However, Rule 6.1 provides an exception for Index Options, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts, which may remain open for trading beyond 3:00 p.m. but in no case later than 3:15 p.m. Chicago Time, as designated by the Exchange. Rule 6.1 does not specifically identify ETNs in the list of products that may be traded beyond 3:00 p.m. Chicago Time, which suggests options on ETNs must close at 3:00 p.m. Chicago time. However, industry practice and the Exchange's current practice allow options on ETNs to trade until 3:15 p.m. Chicago Time. This filing seeks to align C2 Rules with industry practice by allowing the Exchange to determine which options on ETNs will trade beyond 3:00 p.m. Chicago Time but no later than 3:15 p.m. Chicago Time.

2. Statutory Basis

The 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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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 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)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will protect investors and the public interest by reducing potential confusing regarding C2's trading hours for options on ETNs and aligning C2's Rules regarding trading orders for options on ETNs with industry practice. The Exchange notes that the proposed rule is based on NYSE MKT Rule 901NY Commentary .02.

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 proposed rule change will not impose any burden on intermarket or intramarket competition as the proposed rule change will align C2's Rules regarding trading orders for options on ETNs with industry practice. In addition, the proposed rule change does not modify the construct for trading hours but simply adds options on ETNs to the list of products specifically noted in Rule 6.1.

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)(iii) of the Act[11] and subparagraph (f)(6) Rule 19b–4 thereunder.[12]

[5] An Index-Linked Exchangeable Note is exchangeable debt security that is exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount based on the reported market prices of the underlying stocks of an underlying index. *See* Rule 1.1.

[6] An Index-Linked Exchangeable Note is exchangeable debt security that is exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount based on the reported market prices of the underlying stocks of an underlying index. *See* Rule 1.1.

[7] *See* Securities Exchange Act Release 62067 (May 10, 2010), 75 FR 27603 (May 17, 2010) (SR–NYSEAmex–2010–41).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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–C2–2017–022 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–C2–2017–022. 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–C2–2017–022 and should be submitted on or before August 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16396 Filed 8–2–17; 8:45 am]

BILLING CODE 8011–01–P

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2017–0040]

Privacy Act of 1974; System of Records

AGENCY: Deputy Commissioner of Systems, Social Security Administration (SSA).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act we are issuing public notice of our intent to establish a new system of records entitled, Customer Engagement Tools (CET) Record System (60–0383), hereinafter called the CET Record System. We will use this system to maintain the information we collect during our electronic communications with those individuals who have created a *my* Social Security account and have been authenticated to use online electronic services via the *my* Social Security web portal, and who choose to communicate with us using an electronic communication method, such as the Click-to-Chat tool. This notice publishes details of the system as set forth under the caption **SUPPLEMENTARY INFORMATION**.

DATES: The System of Records Notice (SORN) is applicable August 3, 2017, with the exception of the routine uses which are applicable [insert date]. We invite public comment on the routine uses or other aspects of this SORN. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by September 5, 2017.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela J. Carcirieri, Supervisory Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room 617, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–0355, email: *Pamela.Carcirieri@ssa.gov* or Elizabeth Boorstein, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–2824, email: *Elizabeth.Boorstein@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are establishing the CET Record System to cover information we collect about individuals who choose to use one of our electronic communication options to conduct business with SSA online. These communication options provide service to our customers, and will assist individuals who prefer to communicate with us in a dynamic and electronic environment.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this new system of records.

Dated: April 3, 2017.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER:

Customer Engagement Tools (CET) Record System, 60–0383.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Deputy Commissioner of Systems, Office of IT Business Support, Office of IT Enterprise Business Support, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235.

SYSTEM MANAGER(S):

Social Security Administration, Deputy Commissioner of Systems,

Office of IT Business Support, Office of IT Enterprise Business Support, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in sections 205(a) and 702(a)(5) of the Social Security Act, as amended (42 U.S.C. 405(a) and 902(a)(5)).

PURPOSE(S) OF THE SYSTEM:

We will use this system to maintain the information we collect during our electronic communications with individual's who choose to communicate with us via one of our electronic communication options to conduct business with SSA online. The CET Record System will allow us to better serve online users by providing informational and programmatic responses to authenticated *my* Social Security users via designated subject experts throughout the country.

Furthermore, transcripts and communication records may be used for employee performance assessments, employee conduct issues, and employee disciplinary actions. These materials may also be used to help determine individual employee, unit, and office-wide training needs, as well as the quality of responses, trends, public reactions to policies, legislation, and other public announcements. The transcripts and records may be used to train SSA management service observers to ensure uniform and consistent evaluation criteria and as documentation for any disciplinary and performance-based actions. The transcripts and records may be redacted of beneficiary information if the information is not relevant and necessary for this purpose, or changed to protect privacy, before use.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have created a *my* Social Security account and have been authenticated to use online electronic services via the *my* Social Security web portal.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information either provided by an individual or collected in transcripts and records during the electronic communication with a designated SSA employee. This information may include the individual's name, SSN, date of birth, parent name(s), address, and place of birth. Additional information may be included in the electronic communication, which may include information about an individual's Social Security benefits or other business the individual has with the agency. Information about the designated SSA employee will also be collected, including the employee's Personal Identification Number (PIN) and chosen display name.

RECORD SOURCE CATEGORIES:

We obtain information in this system from those individuals who choose to communicate with us using an electronic communication method. Depending on the individual's inquiry, we may also access individuals' information from other SSA sources, such as the Enumeration System, the Integrated Client Data Base, and the Title II systems, to help resolve their questions or concerns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Service Code, unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or third party acting on the subject's behalf.

2. To the Office of the President in response to an inquiry from that office made on behalf of, and at the request of, the subject of record or a third party acting on the subject's behalf.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal, when:

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or:

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines the litigation is likely to SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to DOJ, court or other tribunal, or another party is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. To contractors and other Federal agencies, as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only when SSA enters into a contractual or similar agreement with the contractor or agency.

5. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA, as authorized by law, and they need access to personally identifiable information (PII) in SSA records in order to perform their assigned agency functions.

6. To Federal, State and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities, or

(b) to assist in investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

7. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

8. To appropriate Federal, State, and local agencies, entities, and persons when:

(a) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised;

(b) we determine that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and

(c) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

9. To another Federal agency or Federal entity, when the SSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information

systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. To the Equal Employment Opportunity Commission when requested in connection with investigation into alleged or possible discriminatory practices in the Federal sector, examination of Federal afimative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

11. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigations of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be required by law.

12. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in paper and electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We may retrieve records by the individual's name, the individual's SSN, topic of chat, date of communication, an employee's name, or an employee's personal identification number (PIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are currently unscheduled. We retain records in accordance with NARA approved records schedules. In accordance with NARA rules codified at 36 CFR 1225.16, we maintain unscheduled records until NARA approves an agency-specific records schedule or publishes a corresponding General Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files with personal identifiers in secure storage areas accessible only by our authorized employees and contractors who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, PIN and password, and personal identification verification cards. We keep paper records in locked cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, employees and contractors with access to databases maintaining PII must sign a sanctions document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include (1) a notarized statement to us to verify their identity or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2017–16331 Filed 8–2–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10065]

60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants

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 October 2, 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–2017–0032'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov*.

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:* 1405–0226.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–5535.
- *Respondents:* Certain immigrant and nonimmigrant visa applicants worldwide who have been determined to warrant additional scrutiny in connection with terrorism, national security-related, or other visa ineligibilities.
- *Estimated Number of Respondents:* 65,000.
- *Estimated Number of Responses:* 65,000.
- *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 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 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, national security-related, or other 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.

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 continues implementation of 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 U.S. law enforcement and partners in the U.S. intelligence community to identify characteristics of applicant populations warranting increased scrutiny. The additional information collected will facilitate consular officer efforts to apply more rigorous evaluation of these applicants for 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.

In our emergency information collection request, we stated that relevant State Department officials estimate 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 for visa ineligibilities. At this time, this continues to represent the Department's best estimate. Given the short period since the collection's implementation, the data from consular posts at this time would not represent an accurate estimate of how many applicants might be subject to this collection annually. A lengthier period of post implementation will better inform this estimate, and the Department will update the estimate accordingly. An updated estimate that reflects post experience will be provided in the Department's 30 day notice.

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, national security-related, or other 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. In furtherance of this collection, consular officers are directed not to request user passwords; engage or interact with individual visa applicants on or through social media when conducting assessments of visa eligibility; not to violate or attempt to violate individual privacy settings or controls; and not to use social media or assess an individual's social media presence beyond established Department guidance. Consular staff are also directed in connection with this collection to take particular care to

avoid collection of third-party information.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2017–16343 Filed 8–2–17; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub–No. 388X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Atlanta, Ga.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption [1] under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 1.0 mile of rail line between milepost DF 632.10 and milepost DF 633.10 in Atlanta, Ga. (the Line).[2] The Line traverses United States Postal Service Zip Codes 30324 and 30309.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 2, 2017, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 11, 2017. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 2017, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 8, 2017. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by August 3, 2018, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: July 31, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–16356 Filed 8–2–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0239]

Parts and Accessories Necessary for Safe Operation; Hino Motors Manufacturing U.S.A., Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Hino Motors Manufacturing U.S.A., Inc.'s (Hino) application for a limited 5-year exemption allowing motor carriers operating commercial motor vehicles (CMVs) manufactured by the company to use an Automated Emergency Braking (AEB) system and a Lane Departure Warning (LDW) system camera mounted in the windshield area at a height lower than currently allowed. The Agency has determined that lower placement of the AEB/LDW system camera would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective August 3, 2017 and ending August 3, 2022.

[1] NSR initially filed its verified notice on March 27, 2017. After submitting the filing, NSR discovered that its combined Environmental and Historic Reports (E&HR) contained an incorrect milepost designation which, when changed, impacted the E&HR. At the request of NSR, the proceeding was held in abeyance by a decision served on April 5, 2017. NSR now has corrected and reissued its E&HR. NSR filed its revised verified notice on July 14, 2017, which therefore is the official filing date.

[2] NSR states that the Line includes the portion of NSR's right-of-way that the Board found not to have been abandoned in *Atlanta Development Authority—Verified Petition for a Declaratory Order,* FD 35991, slip op. at 9 (STB served Dec. 15, 2016), *reconsideration denied,* FD 35591 (STB served May 26, 1017). NSR states that it plans to convey the easement and wye right-of-way to Atlanta BeltLine, Inc. for urban development and to improve the City's infrastructure upon consummation of the proposed abandonment.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,700. *See* 49 CFR 1002.2(f)(25). Effective September 1, 2017, the filing fee will be $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub-No. 25) (STB served July 28, 2017).

FOR FURTHER INFORMATION CONTACT: Mrs. Amina Fisher, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–2782, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Hino's Application for Exemption

Hino applied for an exemption from 49 CFR 393.60(e)(1) to allow an AEB/LDW system camera to be mounted lower in the windshield than is currently permitted by the Agency's regulations in order to utilize a mounting location that allows the system camera to function correctly. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1)(i) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted on the interior of the windshield. Antennas and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield, and outside the driver's sight lines to the road and highway signs and signals. However, § 393.60(e)(1)(i) does not apply to vehicle safety technologies, as defined in § 390.5 as including ''a fleet-related incident management system, performance or behavior management system, speed management system, forward collision warning or mitigations system, active cruise control system, and transponder.'' Section 393.60(e)(1)(ii) requires devices with safety technologies to be mounted (1) not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers; or (2) not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers; and (3) outside the driver's sight lines to the road and highway signs and signals.

Hino's application stated:

> Hino is making this request so that it becomes possible to introduce an Automated Emergency Braking (AEB) system and a Lane Departure Warning (LDW) system as optional equipment on some Hino commercial motor vehicles. This system, like many other similar systems which FMCSA has granted exemptions for, requires that a camera be mounted to the upper center area of the windshield in an area where the windshield in an area where the windshield is swept by the windshield wipers to provide a clear view to the lane markings on the road.
>
> In the Hino installation, the camera housing supplied by Meritor Wabco is approximately 4.67 inches wide by 4.30 inches tall. We propose to mount the camera such that is in the approximate center of the windshield and such that the bottom edge of the camera is approximately 7 inches below the upper edge of the windshield, outside of the driver's and passenger's normal sight lines to all mirrors, highway signs, signals and view of the road ahead. This location will allow for the optimal functionality of the advanced safety systems supported by the camera.

Without the proposed exemption, Hino stated that it will not be able to deploy the AEB/LDW system camera in vehicle models because (1) its ''customers will be fined for violating the current regulation,'' and (2) ''the camera will not perform adequately to provide the safety benefit intended by the systems.''

The exemption would apply to all Hino CMVs with the AEB/LDW system camera installed. Hino believes that mounting the AEB/LDW system camera within 7 inches below the upper edge of the windshield will allow it to function properly while maintaining an adequate field of view for the driver.

Comments

FMCSA published a notice of the application in the **Federal Register** on January 19, 2017, and asked for public comment (82 FR 6689).

The Agency received one comment from Mr. Ken Tirone, supporting the exemption application.

FMCSA Decision

The FMCSA has evaluated the Hino exemption application. The Hino AEB/LDW system camera is mounted approximately 7 inches below the top of the windshield, and approximately 5.4 inches below the top of the area swept by the windshield wipers. Although the AEB/LDW system camera is approximately 4.3 inches tall, and mounted about 1 inch below the top of the area swept by the windshield wipers, the manner in which the camera system is installed on the windshield precludes it from being mounted (1) higher in the windshield and (2) within 4 inches from the top of the area swept by the windshield wipers in order to comply with § 393.60(e)(1)(ii)(A).

The Agency believes that granting the temporary exemption to allow the placement of the AEB/LDW system camera lower than currently permitted by the Agency's regulations will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the AEB/LDW system camera would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the mounting location 5.4 inches below the top of the area swept by the windshield wipers (and 7 inches below the upper edge of the windshield) and out of the driver's normal sightline will be reasonable and enforceable at roadside. In addition, the Agency believes that the use of AEB/LDW system cameras by fleets is likely to improve the overall level of safety to the motoring public.

This action is consistent with previous Agency action permitting the placement of similarly-sized devices on CMVs outside the driver's sight lines to the road and highway signs and signals. FMCSA is not aware of any evidence

showing that the installation of other vehicle safety technologies mounted on the interior of the windshield has resulted in any degradation in safety.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning August 3, 2017 and ending August 3, 2022. During the temporary exemption period, motor carriers will be allowed to operate CMVs manufactured by Hino equipped with AEB/LDW system cameras mounted in the approximate center of the windshield such that the bottom edge of the camera is not more than 7 inches below the upper edge of the windshield and outside the driver's sight lines to all mirrors, highway signs, signals, and view of the road ahead. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail 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(b).

Interested parties possessing information that would demonstrate that motor carriers operating Hino CMVs equipped with the AEB/LDW system camera are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: July 26, 2017.

Daphne Jefferson,

Deputy Administrator.

[FR Doc. 2017–16339 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0060]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petitions.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

ADDRESSES: For further information, contact Mr. George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR part 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions.

Comments: No substantive comments were received in response to the petitions identified in Appendix A.

Conclusions: For each vehicle identified in Appendix A, NHTSA has reviewed the respective petition and concluded that the vehicle is either substantially similar to its U.S. certified counterpart and capable of being readily altered to conform to all applicable FMVSS, or that it is capable of being altered to conform to conform to all applicable FMVSS.

NHTSA has also concluded that each RI who imports and modifies a vehicle under one of the subject vehicle eligibility numbers for the first time must include in the statement of conformity and associated documents (''conformity package'') it submits to the NHTSA under 49 CFR part 592.6(d) explicit proof to confirm that the vehicle was, where applicable, originally manufactured to conform to, or was successfully altered to conform to, FMVSS No. 101 *Controls and Displays,* FMVSS No. 138, *Tire Pressure Monitoring Systems,* FMVSS No. 208, *Occupant Crash Protection,* and FMVSS No. 301 *Fuel System Integrity.* This proof must include detailed descriptions of all modifications made, including a detailed description of systems in place (if any) on the vehicle as delivered to the RI, and a similarly detailed description of alterations made to the vehicle and said systems, including photographs of all required labeling. The descriptions must also include parts assembly diagrams and associated part numbers for all components that were removed from or installed in the vehicle, an accounting of any computer programming modifications undertaken and a

description of how compliance was verified after alteration of the vehicle.

NHTSA Decision: Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or has safety features that comply with, or are capable of being altered to comply with, all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles: The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2014–0121

Nonconforming Vehicles: 2009 Jeep Compass Multipurpose Passenger Vehicles
Substantially Similar U.S. Certified Vehicles: 2009 Jeep Compass Multipurpose Passenger Vehicles
Notice of Petition Published at: 81 FR 64978 (September 21, 2016)
Vehicle Eligibility Number: VSP–589 (effective date October 31, 2016)

2. Docket No. NHTSA–2015–0023

Nonconforming Vehicles: 2010 Chevrolet Camaro Passenger Cars
Substantially Similar U.S. Certified Vehicles: 2010 Chevrolet Camaro Passenger Cars
Notice of Petition Published at: 82 FR 17508 (April 11, 2017)
Vehicle Eligibility Number: VSP–591 (effective date June 15, 2017)

3. Docket No. NHTSA–2016–0041

Nonconforming Vehicles: 2008 Chevrolet Silverado Trucks
Substantially Similar U.S. Certified Vehicles: 2008 Chevrolet Silverado Trucks
Notice of Petition Published at: 81 FR 71182 (October 14, 2016)
Vehicle Eligibility Number: VSP–590 (effective date November 28, 2016)

4. Docket No. NHTSA–2016–0118

Nonconforming Vehicles: 2013 BMW R1200 GS Adventure Motorcycles
Substantially Similar U.S. Certified Vehicles: 2013 BMW R1200 GS Adventure Motorcycles
Notice of Petition Published at: 82 FR 17082 (April 7, 2017)
Vehicle Eligibility Number: VSP–592 (effective date June 15, 2017)

5. Docket No. NHTSA–2016–0130

Nonconforming Vehicles: 2014 EMU Camper Trailer 4 × 4 Extreme Adventure
Because there is no substantially similar U.S.-certified version, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).
Notice of Petition Published at: 82 FR 17068 (April 7, 2017)
Vehicle Eligibility Number: VCP–63 (effective date June 15, 2017)

[FR Doc. 2017–16384 Filed 8–2–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Comment Request; Comptroller's Licensing Manual

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on an information collection revision, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning a revision to its information collection titled, ''Comptroller's Licensing Manual.''

DATES: You should submit written comments by October 2, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0014, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain prior approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of this revised collection of information.

The changes to this information collection include revisions to four interagency forms,[1] which are being made in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation. Those agencies will issue a separate joint **Federal Register** notice before or shortly after this notice. The OCC is issuing its own notice so that it may renew its entire collection.

[1] Interagency Bank Merger Act, Interagency Biographical and Financial Report, Interagency Notice of Change in Control, and Interagency Notice of Change in Director or Senior Executive Officer.

The OCC is requesting that OMB extend approval of this collection as revised. The entire collection is discussed in detail in the ''Description'' section, followed by a section highlighting the revisions.

Title: Comptroller's Licensing Manual.

OMB Control No.: 1557–0014.

Description: The information collection requirements ensure that national banks and federal savings associations (FSA) (hereafter ''bank'' or ''banks'') conduct their operations in a safe and sound manner and in accordance with applicable federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The Comptroller's Licensing Manual (Manual) sets forth the OCC's policies and procedures for the formation of a national bank or federal branch or agency, entry into the federal banking system by other institutions, and corporate expansion and structural changes by existing banks. The Manual includes sample documents to assist the applicant in understanding the types of information the OCC needs in order to process a filing. An applicant may use the format of the sample documents or any other format that provides sufficient information for the OCC to act on a particular filing, including the OCC's electronic filing system, the Central Application Tracking System.

The Manual includes requirements for the following corporate filings:

• Interagency Biographical and Financial Report—OCC regulations require the OCC to perform background investigations on proposed organizers, executive officers, directors, and principal shareholders of banks to determine if they have the experience, competence, integrity, character, financial ability, and willingness to direct or lead a bank's affairs in a safe, sound, and legal manner. 12 CFR 5.20, 5.50, 5.51, and 163.33; 28 CFR 16.34, and 20.33.

• Public Notice and Comments—OCC regulations require an applicant to publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business. 12 CFR 5.8, 5.9, 5.10, 5.11, and 5.50.

• Charter—OCC must approve the establishment of a bank. The application includes a business plan and an oath of a bank director. 12 CFR 5.20 and 7.2008.

• All federally-chartered savings associations are required to file and receive prior approval for certain changes to their charter and/or bylaws. The charter and bylaws of an insured FSA are formal documents created when a savings association establishes its corporate existence. The charter states the scope, purpose, and duration for the corporate entity. 12 CFR 5.20, 5.21, 5.22, 5.25, and 5.33.

• Banker's Bank—OCC regulations require that a banker's bank seeking a waiver of a statutory provision must request the waiver in a letter to the OCC. The letter must include information on why the waiver is requested and supporting legal analysis. 12 CFR 5.20.

• Conversions—Institutions must request OCC permission to convert to a bank. OCC regulations require that a converting financial institution provide information related to its request to convert its charter. 12 CFR 5.23 and 5.24.

• Federal Branches and Agencies—OCC regulations require that a foreign bank desiring to establish a federal branch or agency file an application or notice with the OCC. 12 CFR 5.70; 12 CFR part 28.

• Branches and Relocations—A bank must obtain prior approval or give notice to the OCC to establish, acquire, or relocate a main office or branch. 12 CFR 5.30, 5.31, 5.40, 5.52, and 145.92; 36 CFR 800.1 *et seq.;* 40 CFR 1500.1 *et seq.*

• Business Combinations and Failure Acquisitions—OCC approval is required for any merger, corporate reorganization, or acquisition of a failed institution that will result in a bank. 12 CFR 5.32 and 5.33.

• Fiduciary Powers—OCC approval is required for a bank to exercise fiduciary powers. The request letter represents the bank's conformity with the governing statute and its commitment to retain qualified trust management. Additionally, a bank shall file a notice after opening a trust office in a state other than its home office state. 12 CFR 5.26.

• Operating Subsidiaries—OCC regulations require that a bank obtain OCC approval prior to establishing, acquiring, or performing new activities in an operating subsidiary. In certain instances, a national bank may file a notice after commencing an operating subsidiary activity. 12 CFR 5.34, 5.38, 5.39, and 5.58.

• Financial Subsidiaries—A national bank must obtain the approval of the OCC prior to acquiring control of, or holding an interest in, a financial subsidiary, and prior to commencing a new activity in an existing subsidiary. A national bank that intends to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, may obtain OCC approval through filing a certification with subsequent notice or a combined certification and notice. 12 CFR 5.39.

• Bank Service Companies—OCC regulations require that a bank notify the OCC prior to its investment in certain bank service companies. 12 CFR 5.35.

• Investments—OCC regulations require a national bank that wishes to invest in an agricultural credit corporation, an eligible savings association, or any other equity investment authorized by statute after February 12, 1990, to provide notice to the appropriate OCC district office. The regulation also requires that a national bank or a federal branch making a non-controlling investment, directly or through an operating subsidiary, file a written notice or application. The regulations further require an FSA making a pass-through investment, directly or through its operating subsidiary, to file an after-the-fact notice or an application. 12 CFR 5.36 and 5.58.

• Thrift Service Corporations—OCC regulations require that an FSA obtain OCC approval prior to establishing or acquiring a subsidiary or performing new activities in a thrift service corporation. 12 CFR 5.59.

• Annual Report—The OCC requires that each national bank prepare an annual report as of December 31 on its operating subsidiaries and file the report by January 31 of the following year. 12 CFR 5.34.

• Branch Closings—Federal law requires a bank to notify the OCC if it closes a branch or if it converts a brick and mortar branch to an ATM branch. 12 U.S.C. 1831r–1.

• Termination of National Bank or FSA Charter—OCC regulations require a bank to notify the OCC of its intent to voluntarily liquidate, merge out, or convert out of the bank charter. 12 CFR 5.25, 5.33(k), and 5.48.

• Capital and Dividends; Subordinated Debt—OCC regulations require that a bank obtain OCC approval or, in some cases, provide notice to the OCC in connection with a change in equity capital, an issuance or prepayment of subordinated debt, and the payment of dividends under certain circumstances. The applications are titled, ''Increase in Permanent Capital,'' ''Reduction of Permanent Capital/Dividends Payable in Property Other Than Cash,'' ''Reverse Stock Split,'' ''Quasi-Reorganization,'' ''Reduction of Permanent Capital and Capital Distribution,'' ''Issuance of Subordinated Debt,'' and ''Prepayment of Subordinated Debt.'' 12 CFR 5.45, 5.46, 5.47, 5.55, 5.56, 5.60, 5.61, 5.62, 5.63, 5.64, 5.65, 5.66, and 5.67.

• Change in Control—Any individual, group, or company that proposes to acquire control of a bank must submit prior notice of that intent to the OCC. 12 CFR 5.50.

• Change in Senior Executive Officer and Director—Whenever a change in control occurs, the bank must promptly report to the appropriate federal banking agency any changes or replacements of its senior executive officer or of any director occurring in the next 12-month period. Also, prior notice and approval is required for any additions to the board of directors or senior executive officers if: The bank is not in compliance with minimum capital requirements; is otherwise in troubled condition; or after OCC review of the plan required under section 38 of the Federal Deposit Insurance Act, the OCC determines that prior notice is appropriate. 12 CFR 5.50(h) and 5.51.

• Director Waivers—Every national bank director must be a citizen of the United States and a majority of the national bank directors must reside in the state where the bank is located. The OCC may waive the requirement of citizenship for not more than a minority of the total number of directors and the residency requirement for a majority or all of the directors. A national bank may file a letter requesting a waiver of the citizenship or residency requirements. *See* 12 U.S.C. 72.

• Change of Corporate Title and Address—OCC regulations require a bank that changes its corporate title or address to inform the OCC of that change. 12 CFR 5.42 and 5.52.

• Management Interlocks—Banks may apply to the OCC for exemption from the prohibitions on management interlocks that would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. 12 CFR 26.6.

• Customer Satisfaction Survey—This survey information is collected as part of the OCC's quality assurance program.

• Substantial Asset Change—OCC regulations require a bank to obtain prior written approval: For a change in the composition of all, or substantially all, of the bank's assets either through the sale or other disposition of assets; once having disposed of all or substantially all the assets, to reactivate its operations through the subsequent purchase, acquisition, or other expansion of its operations; for any other purchases, acquisitions or other expansions of operations that are part of a plan to increase the size of the bank by more than 25 percent in a one year period; for any other material increase or decrease in the size of the bank or a material alteration in the composition of the types of assets or liabilities of the bank; or for any change in the purpose of the bank's charter. 12 CFR 5.53.

Changes to the Information Collection

The following were updated, with burden increases only: Interagency Notice of Change in Control, Interagency Biographical and Financial Report, and Interagency Bank Merger Act Application.

The following forms were updated with minor edits:

• Application Amendments—Updated to remove reference to ''CAIS.''

• Authorization for Release of Information/Consent Form for Background Investigations—Updated to make language more clear, in compliance with the Fair Credit Reporting Act.

• Branches Requiring Authorization—Removed references to ''OTS.''

• Change of Address—Added a missing check box for change in address of a branch.

• Other Equity Investments or Pass-Through Investments—Corrected a typographical error.

• Individual Oath of FSA Director—Updated to correct typographical errors.

• Reduction of Permanent Capital/Dividends Payable in Property Other Than Cash—12 CFR 5.66 requires national banks to obtain approval before paying a dividend-in-kind. Previous revisions to the form inadvertently omitted applicability of the form for this use.

• Interagency Notice of Change in Director or Senior Executive Officer—Minor updates and further clarification of instructions and requirements.

The following forms were updated to clarify the information requested:

• Increase in Permanent Capital Notice—Generally an FSA is not required to apply for an increase in capital unless the method of increase itself requires a filing (such as issuance of a new class of stock). However, in certain circumstances, a federal stock savings association is required to submit an application and obtain OCC approval. National banks are required to give notice and receive OCC certification.

• Interagency Biographical and Financial Report—Minor updates and further clarification of instructions and requirements. Includes additional questions typically asked during the application review process, such as information on lawsuits, suspensions, tax obligations, and liabilities.

• Interagency Notice of Change in Control—Minor updates and further clarification of instructions and requirements. Includes additional questions typically asked during the application review process, such as information on non-voting shares, and whether the applicant is joining an existing group acting in concert.

• Interagency Bank Merger Act—Updated to reflect new requirements under the Dodd-Frank Act, or otherwise necessary to evaluate statutory factors, as well as additional questions typically asked during the application review process. Requests financial projections for three years versus the current one year.

The following forms were updated to delete requirements:

• Citizenship and Residency Waivers—Removed applicability to FSAs and clarified that only the biographical portion of the form is required.

• Commencement of Fiduciary Activities Notice, Fiduciary Powers After-the-Fact-Notice, Fiduciary Powers Application, and Surrender of Fiduciary Powers Notice—Removed requirement for a bank seal.

Additional Requested Items

The following are additions to the collection that capture existing requirements:

• Conversion to National Bank Completion Certification and Conversion to FSA Completion Certification—Certification is submitted to indicate that all steps required to convert to a bank were taken, including execution of all documents required for organization, requisite shareholder or member approval, board of directors authorization, and adoption of bylaws. Upon receipt of the certification, the OCC issues the institution a new charter.

• Reduction of Permanent Capital and Capital Distribution—Under 12 CFR 5.55, FSAs are required to obtain OCC approval before issuing a capital distribution under certain circumstances. The request is reviewed to determine whether the FSA's request is in accordance with existing statutory and regulatory criteria. The reporting requirements were previously included in OTS Form 1583. The new form was approved under OMB Control No. 1557–0338 and later merged into OMB Control No. 1557–0014.

Transfer of a Collection

Investment in Bank Premises—OCC regulations require a bank to obtain prior approval whenever an investment in bank premises will cause the total investment in bank premises to exceed the amount of the bank's capital stock,

unless the bank is eligible for the premises notice process set forth in 12 CFR 5.37(d)(3). 12 CFR 5.37(d)(1) and 7.1000(c). This item has been merged into the collection covering part 7 (OMB Control No. 1557–0204).

Type of Review: Regular.

Affected Public: Individuals or households; Businesses or other for-profit.

Estimated Number of Respondents: 3,715.

Estimated Total Annual Responses: 3,715.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 12,533 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 28, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017–16381 Filed 8–2–17; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending June 30, 2017. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABBUEHL BURKE	PAMELA	SUE
ABCHEE	ANTOINE	BERNARD
ABERG	STEVEN	NOWLIN
ABROMOWICZ	MARC	RICHARD HEINRICH
ABUDAWOOD	EBTEHAL	ANAS
ABUDAWOOD	ELAFF	ANAS
ABUDAWOOD	ENAS	ANAS
ABUSAQ	ABDULLAH	HUSSAIN
ACIKYUREK	MUSTAFA.	
ADAMA	INGE	MARCHIA
ADAMOPOULOS	LIANNE.	
ADAMS	LYNNE	ROBERTS
ADAMS	SAMANTHA	ZOE
ADHAMI	NORA.	
AERTS	RONNY.	
AHAMED	ADEEL	AZIZDIN
AHLBORN	HEINZ	GERHARD
AIELLO	FRANCESCO	LUIGI
AITKEN	MICHAEL	JAMES
AJLAN	SALAH	SALIH
AL-ATHEL	SETTAH	FAHAD
ALBERS-HOUDE	RENEE	CHRISTEL
AL-DHAHERI	ALI	OBAID
ALEXANDRA	JASMINE.	
ALFRED	NANCY	JEAN
ALGERA	HENRY	FREDERICK
ALJALAJEL	MOHAMMAD	ABDULRAHMAN
AL-KASSABI	ABDULA.	
ALKHABORI	HUSSEIN	SALEEM JAWAD
ALLEN	HEATHER.	
ALLEN	VICTORIA	MARY
ALLERBY	ANDREW	J.
ALLRED	NATHANIEL	CHARLES
AL-MANSOOR	MASOOR.	
AL-MAZROA	SULTAN	SULIMAN
ALMOALLIM	ABDULAZIZ	MAZIN
ALMOALLIM	OMAR	MAZIN
ALSANEI	SALEH	ABDULLAH
ALSUDIRI	LATIFAH	ABDULLAH
AL-SULAIMAN	BADR	A
AL-SURF	MOHAMMED	SAIED
AL-THANI	JASSIM	MOHAMMAD
ALTMAYER	BERTRAND	FRANCIS
ALTUWAIJRI	ESAM	ALI

Last name	First name	Middle name/initials
AL-UBAID	ANAS	ABDULRHMAN
ALVAREZ	ALICIA	MARIA
ALVAREZ	JOSE	FRUCTUOSO
AMADOR	MOLLY	M
AMIN	RYAN	MOHAMMED R
AMIRAULT-LANGLAIS	DIANE	LOUISE
ANDERFUHREN-WAYNE	CYNTHIA	S
ANDERSON	CAROLYN	FAYE
ANDERSON	JON	BRADLEY
ANDERSON	MARIA.	
ANDERSON	NICOLE	DIANNE
ANDERSON	WILLIAM	GRIFFIN
ANDREWS	JILLIAN	ANNELI
ANDREWS	JOHN	TODD
ANGKASA	RONNY	HADIANA
ANNERINO	JACQUELINE	CATHERINE
ANSONS	OLIVER	GUNARS
ANTTURI	MARJA	HELENA
ANWAR	GARRETH	CHRISTOPHER
AQUINO	SUZANNE	SANTOS
ARCENEAUX	CLYDE	GLYNN
ARCENEAUX	MONA	JANE
ARCHAVSKIJ	LEONID	M
ARIF	LAITH	AWNI
ARMSTRONG	MAUREEN	ELIZABETH
ARONSON	JEREMY	MARK
ARTEAGA	MARCO	SEBASTIAN
ASHBY	ROBERT	JAMES
ASHENHURST	REBECCA	LOSEE
ASHMORE	SCOTT	CYRIL
ASHRAQ	KHALID.	
ASHTON	CHRISTOPHER	KAWIKA
ASSI	MAUREEN	ANNE SHADEED
AW	KAILER	JONAH
BAAR	DAVID	WILLIAM
BABA	KAORU.	
BACHMANN	PETER	MATTHIAS
BACKMAN-BEHARRY	BRYAN	DAVID
BACON	DIANE	MICHELLE SEGUIN
BACON	GAIL	AUDREY
BACON	SHELLEY	JOHN
BADENHERST	GESINA.	
BADER	ANDREA	JEAN
BAENZIGER	ALEC	IAN
BAENZIGER	LOIC	STEVE
BAERTSCHI	ANNE-MARIE.	
BAHRT	NICHOLE	KATRINA
BAKER	GARNEY	GLENN
BAKER	JASON	BRIAN
BAKER	SUZANNE	FARRYL
BAKHSHIAN	ERVIN.	
BALDASSARRI	JASON.	
BALL	MOLLY	ELIZABETH
BALSARA	ANDREA	KAY TORREY
BAMBERGER	KARIN	LOUISE
BAMRAH	ALIA.	
BANK	BARBARA	ELLEN
BARKER	JEAN.	
BARNES	CAROL	ANN
BARTELT	SUSANNE.	
BARTOO	TIMOTHY	GLENN
BASILIUS	LENTCER.	
BATARSEH	EID	ISSA SALEM
BATARSEH	FOUZIEH	ISSA
BATCHELER	FRANCIS	DAVID
BATCHELER	ROSA.	
BATT	WILLIAM	GERHARD
BAUCKMAN	STEPHEN	ALLEN
BAUMANN	RYAN	DANIEL
BAXTER	RACHEL	ANNE
BAYES	AARON	MARSHALL
BEAUDOIN	PAUL.	
BECKERMANN	CHRISTINE	MARGARET
BECKERMANN	GABRIELLE	JEAN

Last name	First name	Middle name/initials
BEDARD	SHAWN	ANDREW
BEESLEY	PIERS	OLIVER
BEETSTRA	ANNE	CHERYL LACEY
BELANGER	SUZANNE	MARIE
BELCHAM	KELDA	ALEXANDRA
BELL	ELIZABETH	NADIA
BELLANTONI	STEPHEN	J
BELL-SMITH	PHILIP	PRESTON
BENDIXSON	STEPHEN.	
BEN-ISRAEL	NOGA.	
BENNE	KARL	MARTIN TOBIAS HANSELMANN
BENNETT	PIA	SEELI
BENSON	MADELEINE	RUTH
BERAHA	NIKOLA.	
BERGER	CHRISTINE	ANNE
BERKELHEIMER	WANDA	KAY
BERKLEY	ANDREW	JOSEPH
BERNHARD	DAVID	STEVEN
BERNSTEIN	LARA	ALEXANDRA A. R. K.
BERTAGNA	CHRISTINE	DANIELE
BERTHIER	ANJA	DOMINIQUE
BEURSKENS	GOVERT	MATTHEUS
BIELER	LORAINE	EMANUELLE
BILODEAU	VICKY	RENETTE
BINKERT	PHILIPP	DANIEL
BIRRER	DANA	ELENA
BISHOP	HUGO.	
BISHOP	RANDALL	CLARK
BISSIG	MARCO	ANTONIO
BLACK	JOANNA	MIRIAM
BLAKE	CHRISTOPHER	JAMES
BLAKE	KEVIN	JOHN
BLAKE	RAYMOND	WILLIAM
BLASER	KATRIN	SUSANNE
BLOCH-NEVITTE	SUSAN	MARY
BLOCK	ANNE	MARIE
BLOEMHARD	JEAN	MARC
BODOCZKY	PETER	ISTVAN
BOGLE	ARTHUR	ANTHONY
BOLLA	JESSICA	LEIGH
BOLLIGER	LINDA	GAIL
BOLTON	VALERIE	ANNE
BOLTON	WILLIAM	JOHN
BOND	LINDA	KAY
BONICATTI	PATRICIA	WAINWRIGHT
BONZON	CORALIE	MARIA
BORRELLI	FRANCES	ROS
BOSCOE	POLLY	LOUISE
BOUCHILLOU	LAURA	CATHERINE
BOUGARY	ABDIA	A
BOUTIN	GUY	RICHARD MAXIME
BOVE	GUY	THOMAS
BOYD	KIM	MARIE
BOYER	JACQUELINE	JOY
BRADY	CAROL	E.
BRADY	JONATHON	MARK EDWARD
BRADY	KIERAN	M.
BRANDT	MARTHA	DIS
BRAZIER	VERONIQUE	MARIANNE VALENTINE
BRENCIC	ELIZABETH	NICOLE
BRENNAN	AMANDA	JANE
BRENT	MARTHA	JEAN
BRIDGES	EMMA	JANE
BRIGGS	KATHERINE	THERESA
BRISBOIS	AMANDA	JOHNSON
BRISSY	FRANCOIS	YVON
BRITTAN	STEVEN	LOUIS
BROCKLEHURST	SARAH	LOUISE
BROUSSEAU	JOSEE	PIERRETTE
BROUWER	GIJSBRECHT	JACOBUS DIEDERICK
BROWN	WILLIAM	THOMAS
BRUNNER	NINA	EMILIA
BRUS	CECILE	ELIANE
BRYCE	EMMA	PATRICIA

Last name	First name	Middle name/initials
BUCK	DEBORAH	ELISE
BUKOJEMSKY	STEFAN	J
BULASWAD	NOUWAF	MUBARAK
BULLER	KIMBERLEY	JEAN
BURAWOY	ROBERT	GEORGE
BURGER	NICOLA	RAFAEL
BURGIN	VICTOR.	
BURKE	PETER	LUC RAYMOND
BURNS	BRANDON	LAIRD
BURNS-FIERLINGER	HADLEY.	
BURNSTAD	JOELLE	ELIZABETH
BURTON	ADAM	GEOFFREY
BURTON	SHARON	LOUISE
BUSER	KARIN.	
BUTLER	STEPHEN	PATRICK
BUTLER-JENKINS	PAMELA.	
BYE	ROBERT	EDWARD
BYERLEY	JOHN	JOSEPH
CAFLISCH	DEE	ANN JOY
CAIADO	CASSANDRA	ELIZABETH
CAJKO	LARA	ANNAMARIE
CALDWELL	BRENDA.	
CALLANDER	BOBBIE	MAY
CAMERON	JOANNE	SCHEUER
CAOUKI	ANTHONY	JAMES
CAPLAN	LINDA	HARI
CAPLAN	LISA.	
CAPOGNA	NANETTE	LEE
CAPT	GLORIA	COSTANZO
CAREY	SIKA.	
CARNOCHAN	DAINA	ANDRA
CARR	ANN	MAUREEN
CARTER	KIRSTEN	JAYNE
CARTIER	LYSE	MELOCHE
CASEY	MARY	EILEEN
CENTATIRMPO	ANNA	MARIA PUDDU
CERIANI	ALESSANDRO.	
CHAI	EPHREM.	
CHAN	ADA	YUEN-FUN
CHAN	KARMEN.	
CHANG	ANDREW.	
CHANG	JOHN	WEN JUN
CHANG	MARGARET	Y S
CHANG	SUNNY	JUNG-SHANG
CHANG	YAO-CHUNG.	
CHAO	SAMUEL	CHI YEN
CHARAMIS	ALEXIA.	
CHARLAND	BERNARD.	
CHARLES	JOHN	ELTON
CHARLTON	CELIA	MARIAN
CHARLTON	SUSAN	MARIE
CHASSOT	DENISE	MARIA
CHAU	PHILIP	TAK WING
CHAVES KOEHLER	PAULA	MENEGHETTI
CHAW	PEGGY.	
CHEN	ANDREA	C
CHEN	JEFF	HUNGCHE
CHEN	LIANG	YU
CHEN	LIMING.	
CHEN	PENELOPE	YOSHIKO
CHEN	SHERRY.	
CHEN	WAYNE	HWAY-TZE
CHEN	YONGSHUN	JOHN
CHENG	PAUL	LAP TAK
CHENG	SHU	RONG JOANNA
CHENG	TIAN	YOU
CHEONG	IVY.	
CHEW	STEPHANIE.	
CHIARI	JOAN	MARIE
CHIEN	PO-HAN.	
CHINNAPONGSE	SITHIPHOL.	
CHOI	GRACE.	
CHORN	VERNON	LIONEL
CHOW	DRAFUS	CHUN-RAY

Last name	First name	Middle name/initials
CHOWNE	EMILY	LOUISE
CHOYCE	LESLEY	WILLIS
CHRISTIANSEN	DEBRA	ANN
CHRISTOU	NORMA	ANN
CHU	ALISON	LILLIAN
CHU	HOWARD	HO HWA
CHU	LAI.	
CHU	MING-EN	CHARISSA
CHU	TZU-HAO.	
CHUANG	SHIRLEY.	
CHUDNOVSKY	JOSHUA	ALEXANDER
CHUI	KAR LAI	CLARE
CHUNG	CHRISTINE	P
CHUNG	JASON	J
CIUFFA	SABINA.	
CLARK	AMIE	NICOLE
CLARK	MATHEW	KENT
CLARK	ROBYNNE	DALE
CLARKE	LUCY	MARIE
CLATTENBURG	MICHAEL	PATRICK
CLAY	OLIVER	KEATINGE
CLEIS	DANIA.	
CLOUTIER	PIERRE.	
COALES	UNA	FRANCESCA
COCHRAN	CARRIE	MAY
COERS	JOHATHAN	DAVID
COGNET	BRUNO	PASCOL
COLE	BIRGIT	ANNA
COLEMAN	CHRISTOPHER	LOUIS
COLES	JILLIANNE	LYNETTE
COLLON	CLAUDINE	JOHNSTON
COLTON	CHRISTOPHER	JAMES
CONDRON	MARK	JAMES
CONNORS	KAYLA	ELENA
CONNORS	MARCI	LYNNE
COOK	AMANDA	MICHELE
COOPER	KARA	SUZANNE
COOPER	KRISTIN	ELIZABETH
COPELOVITZ	GARY	ISAAC
CORCORAN	SUZANNE	SHEEHAN
CORDELL	ELIZABETH	KAITLIN
COREN GOLDMAN	DEBRALEE	L
CORMIER	JED	JOSEPH LA LUMIERE
COUETTE	OLIVER	MARIE
COUGHLIN	HEIDI	LOUISE
COUTTS-ROUT	MICHELE	ANDREA
COUTURE	ELIZABETH	JOST
COWLEY	DAVID	CHARLES
COWLEY	DONNA	GULLETTE
CRAWFORD	LINDA	KAYE
CREIGHTON	BERNARD	SYDNEY
CRIGHTON-BUCK	TAMMY	CECILE
CROISIER	CHANTAL.	
CRONIN	ELISABETH	CELESTE
CROTTA	AGNESE	NERINA
CRUESS	ANDREW	COCHRANE
CUETO	JAVIER.	
CUETO	PABLO.	
CUNNINGHAM	JANINE.	
CURRIE	MICHAEL	JOSEPH
CZEMPER-LIOPIS	NILS.	
D'ADAMO	FRANCK	ANTOINE
DAHL	PATRICIA	JACQUELINE
DAITZ	ANDREW	DAVID
DALTON	MATTHEW	LYNN
DAMJANOVIC	NIKOLA.	
DANESH	HOMAYOUNDOKKHT	JAHANSOUZI
D'ANGELO, JR	THOMAS.	
DANIEL	ANNE	ELIZABETH
DANIEL	PETER	DAVID
D'ARI	RICHARD	ARTHUR
DAUTERMANN	JENNIFER	JEAN
DAVATZ	STEFAN	PHILIP
DAVIS	BENJAMIN	JOEL

Last name	First name	Middle name/initials
DAVIS	LILA.	
DAVIS	MARK	STEVEN
DAVIS	RICHARD	STANLEY MAURICE
DAWSON	ANSLEY	VIRGINIA
D'CRUZ	EMILY	MOULTON
DE BARY	CONSUELO	ISABEL
DE BOER	KARRIN	OBED
DE HAAN	TODD	LEE
DE JESUS	MICHAEL	OSMENA
DE LA VALLIERE	OLLIVIA	MARIE
DE LADURANTAYE	MARC	DAVID
DE LADURANTAYE	PHILIP	LAURENT
DE LADURANTAYE	PHILIP	LAURENT
DE MONTJOYE	DOUGLAS	F C
DE MOOR	ANNICK	LINE
DE PASS	NORMAN	LESLIE
DE PASSILLE	CLAIRE	MARIE
DE SOUSA	VASCO	PHILLIP
DEBHAKAM	MILIN.	
DEEN	ROZANY	R
DEFEHR	ROCHELLE	JACQUELINE
DEGELMAN	JANET	LEE
DEL VALLE	GEORGE	CHRISTIAN
DELCOURT	MICHELE	DENISE GERMAINE
DELVAUX	JEREMY	OLIVIER
DEMARET	NANCY	A
DENEIKO	KATHERINE	MEGHAN
DENIG	JOHN	FREDERIC
DESCOURS	JACQUES	REGIS
DEVANATHAN	LATA.	
DEVERALL	LLOYD	JAMES
DEWALD	ROSEMARY	MARGARET
DEWINTER	ROBERT	LEONARD
DEWJI	ADAM	SOLOMON
DEWJI	ALLYKHAN	SADRUDIN
DEYOUNG	PATRICIA	ANN
D'HUYSSE	CHARLOTTE	MYRIAM DELLA FAILLE
DI DONATO	LORENA.	
DI STEFANO	PAUL.	
DIEPEVEEN	SUSAN	VAN LAAR
DIERICKX	PASCAL.	
DIETRICH	MONIQUE	B
DIGEMOSE	CHRISTIAN	ANDERS
DIGGINS	TIMOTHY	ROBERT QUINN
DILLMAN	JOAN.	
DIONISI	MARCO	FABIO
DIOTTE	MARIE	AGATHE
DISNEY	CHRISTOPHER	SCOTT
DMYTRIEV	OLEKSANDR.	
DOBSON	SHAUNA	DEL
DODDS	MARY	COLLEEN
DOMES	SAMUEL	ALBERT
DONALDSON (NEE: DAY)	CAROLYN	SUE
DONZE	JENNIFER	PATRICIA
DOOLEY	PETER	ELLIOTT
DOUCET	CYNTHIA	ANN
D'OUSSELGHEM	ARNAUD	DE KERCHOVE
DRAZ	ATTARID	JAWEED
DREYFUS	MICHEL	PIERRE
DRIESSEN	JOHANNES	HENDRIK
DRISKILL	ALEXANDER	MONTGOMERY
DROUIN	LISA	MANON
DRUEDENDAHL	HARALD.	
DUBENDORFER	VERENA	MONICA
DUECK	IRENE.	
DUECK	STEVEN	KELLY
DULCLOS	DENISE	JEANNE
DULING	RORY	L
DUNBAR	JULLIET	KATHLEEN NATASHA
DUQUENNE	ASTRID	NATHALIE
DZWONNIK	BEATA	LAURA
EARLE	NANCY	LOUISE
EARNHART	STEPHEN	LYNN
EASTEP	STEVEN	DENNIS

Last name	First name	Middle name/initials
EBNER	ROBERT	PETER
EDBROOKE-CHILDS	JULIAN	HAMPTON
EDMONDS	DANIEL	HAO
EDWARD	JESSICA	ALEXANDRA MARGARET
EIRIKSON	CARL	HAAKON
EISNER-CIUCCI	ANN.	
ELATTARY	HUSSAM	MOHAMED
ELLIOTT	GERALD	SHANE
ELLIOTT	SEAN	JAMES
ELLIS	WILLIAM	MACKAY
ELMER	KARIN	ELSBETH
ELMIGER	STEVEN	RICHARD
ELSAESSER	DAMIAN	SHELDON
ELSENHANS	MELANIE	JEANINE
ELTES	JONATHAN	RYAN
ENGEL	CAMILLE	LIA
ENOCH	GAVIN	SIMON
EPP	MANFRED	WOLFGANG
ERICKSON	JON	LAROY
ESSES	MAURICE	I
EVANS	BARRY	ALBERT
FABBRI	BEVERLEY	P.
FAHRENBRUCK	JOY	ANN
FAIRHEAD	TYRREL.	
FALK	BEATRICE	INGRID
FALTER	THOMAS	ERHARD
FANCHER JR	MICHAEL	LYNN
FANCHINI	CATHERINE	ADRIANA
FANCHINI	JACQUELINE.	
FANG	CHIA-YU.	
FANTACCI	MARIA	VICTORIA
FANTACCI	MICHAEL	MARCH
FARRIS	SAMUAL	CHRISTOPHER SCOTT
FEIST	CHRISTIAN	PETER
FELLNER	JOYCE	ALISON
FERBACHE	CIARAN	JAMES
FERGUSON	BRUCE	ROBERT
FERGUSON	NANCY	MARIE
FERLAND	CELINE.	
FERLAND	LUCIE	CARMELLE
FERNHOLM	NICHOLAS	JOHN
FERRANDO	DAVID	ARREGUI
FERRI	JEAN	LAURA
FIELD	DANIEL	EUGENE
FIELD	LAURENCE	HAMILTON
FIELD	TRENT	CLIFFORD
FIERLINGER	PHILIP.	
FILGUEIRAS	CAROLINA	ALESSANDRA GUERRA
FISCHER	STEFAN	WALTER
FISK	BRENDA	CORINNE
FLAHERTY-REUSCH	ERIN	NOREEN
FLECHTNER	ROSWITHA	BRIGITTE
FLEMING	KATHLEEN	PATRICE RYAN
FLURI	MARIA	DOROTHEA
FORBES	PATRICIA	SETON
FORCEY	DANA	STARR
FORD	ARCHIE	RAYMOND
FORSTER	ROBERT	BERNARD
FORTIN	JEAN	MATHIEU
FOSTER	KELLEY	ANNE
FOSTER	SYLVIA	BRIGITTE
FOWLER	FRANK	FONTENELE
FOWLER	SUZANNE	STRATT
FRANCK	CARSTEN.	
FRANKS	SARAH	CAROLINE
FRANZEL	ANKE	MARIA
FRASER	RICHARD	SPARLING
FRASER	TABITHA	CHRISTIAN ANNAND
FREEDMAN	JODY	MARCUS
FREIMAN	KATE	MIRIAM
FREMERY	NIKOLAUS	IVAN
FRESCHI	PAOLO	FEDERICO GIUSEPPE
FREY	MIA	ZOEY
FREY-HASEGAWA	ERIKA	ANITA

Last name	First name	Middle name/initials
FRIESEN	SARAH	ELIZABETH
FROEHLICHER	MARC-ANDRE	STEPHANE
FROEHLICHER	PASCAL	ROLAND CHARLES
FROEHLICHER	SYLVIE	NADINE VERA
FROSCHMAYR	RUDOLPH	ANTON
FROWEIN	ALEXANDER	R
FRULLO	MARSHA	JEANNE
FRY	CATHERINE	JEAN
FRY	WILLIAM	GORDON
FRYER	RITA	ANNE
FULLER	CHRISTOPHER	RAY
FUNG	DANIEL	YAN-WEI
FURRER	EVA	MAE
GABRIEL	BRADEN	FARREN
GABRINI	ANNE-MARIE	ELIZABETH
GAEDE	WILLIAM	LEE
GALLUP	RALPH	LAWRENCE
GAMA	MELINDA	MARIE
GAMBOA (AKA BUJAZAN)	SANDRA	MARIE
GANAN	ESTER.	
GANSEL	KENNETH	A
GANZHORN	THILO	PETER
GAO	ZHONGXIANG.	
GARDNER	LON	RAEBURN
GARRETT	DANIEL	PATRICK
GAUDER	GLENN	RICHARD
GAUPMANN	FERDINAND.	
GAUTIER	THIERRY.	
GEORGE	JAMES	SAMUEL
GERETH	BETTINA.	
GERMERAAD	JASPER	KEVIN
GERVAIS	MI	RANG CHO
GEVAERT	JOAN	NANCY
GHESQUIERE	KRISTEN	JOY
GIBBS	MARGARET	MARY
GIBSON	STEPHEN	D
GILBERT	MARY	MARGARET
GILL	GAYLE	KATHLEEN HAMILTON
GILL	ROWENA	AGNES
GIROUX	MARY	JO
GITTENS	JARONE	PATRICK SOUTHER
GLAUSER	ALEXANDER	ANTHONY
GLEN	FIONA	KATHERINE
GLENDENNING	CHRISTINE	ANN
GLICK	YEHUDAH	YEHOSHUA
GLICKMAN	SUSAN.	
GLIDDEN	CLINE	ASTOR
GLIDEWELL	PETER	CESARE
GOETZKE	LUC	FRANCOIS TERRY
GOGUEN	JACQUELINE	MICHELLE
GOH	ZACHARY	KOON-HAN
GOLDBACH	BRIAN.	
GOLDFINCH	MARIE	DIANN
GONSER	THOMAS.	
GONZALEZ	JORGE.	
GONZALEZ	RENE.	
GOODMAN	SHAUN	GEOFFREY
GORDEN	ROBERT	JOEL
GORDON	ANTHONY	DAVID
GOULET	KRISTIAN	BERNARD
GRADENER	NICOLETTE.	
GRAHAM	MARY.	
GRAMMATIKOS	THEOHARRY.	
GRATTON	SUZANNE.	
GRAY	ROSS	WILLIAM
GREENBERG	HOWARD	DAVID
GREENMAN	STEPHEN	IAN
GROSS	FRANZ	XAVER LAENGMUELLER
GRUBER	MARCEL-ANDRE	RAPHAEL JUERGEN
GRUBER	MAUEL-RENE	RICARDO GUENTHER
GRULLON	MELBA.	
GUBITZ	DOUGLAS	ADAM
GUIDA-NESTEL	KAREEN	MARIA THEORA
GUIGUET	KRISTINA	MARIE

Last name	First name	Middle name/initials
GUPTA	SHAILENDRA	K
GUSTAFSON	CHRISTOPHER	GEORGE
GUTIERREZ-MATURANA	BARBARA.	
GWERDER	NICOLE	CARMEN
GWILT	DAWN	ELIZABETH
HABGOOD	JOHN	ALAN
HACKBARTH	ANN	MARIE
HACKEL	ALESSIA	SOPHIA
HADDAD	DIANA	INES
HAEFELI	PATRICIA	BRIGITTE
HAGE	SORINA	MONIQUE
HAILSTON	JOSEPH	STEVEN
HAILSTONE	LINDA	ANN
HAILSTONE	SAMUEL	NICHOLAS WALKER
HAJNAL	MARK	NICHOLAS
HALL	ANDREW	GRAHAM
HALLBERG	ANDERS.	
HALLETT	DEBORAH	PETERSON
HALVORSEN	TORBEN.	
HAMEL	CHERIE	AMM
HAMILTON	SCOTT	JAMES
HAMPSON	DINAH	MARIE
HAN	NI	L
HAN	ZHEN	FA
HANABERGH	MERCEDES	MARIA
HARMON	PAUL	ROBERT
HARPP	DAVID	NOBLE
HARRIS	ROBERT	PATRICK
HARRIS	STEPHEN	JOEL
HARRY	CAROLYN	DEAN
HART	CHRISTOPHER	O'NEAL
HART	RITA	JUDITH
HARTEL	ENE	LISA
HARTMAN	CELINE	S
HARTMAN	CRAIG	THOMAS
HARVEY	STEPHANIE	ELAINE
HASHIMOTO	MASAKO.	
HAUPT	SARAH.	
HAUSER	FRITZ	ROBERT
HAUSER	PHILLIP	JOHANNES
HAY	JAMES	BRUCE
HAYES	RICHARD	ALLEN
HEALY	CAROL	ANN
HEATHCOAT-AMORY	SARAH	ARABELLA MARJORIE
HECKENDORN	JUDITH	DORIS
HEDGES	KATHERINE	ANNE
HEERSINK	JOHANNA	RUTH
HEICK	CAROLINE	ELIZABETH
HEIDE	RANDAL	SCOTT
HEINRICH	ELEN	EMIKO
HEITLAND	IRENE.	
HEITMANN	MASA	MARTHA
HELFERT	ANNE	L
HELLER	CHARLES	SEBASTIAN PAUL PA-SANGS
HELLER	MICHAEL.	
HELLIWELL	KATHARINA	EVA
HELMS	HENRY	CHRISTIAN
HELTING	HOLGER	TORSTEN
HEMSING	LINDA	RUTH
HENSEN	JOEL	MATTHEW
HENSON	CONNIE	DEE
HENSON-LUKAS	ALICE	MARIE
HERMAN	SARETTA	JOY
HERMAN-SPARTINELLI	DEBORAH	ANN
HERMANSSON	LINDA	MARIE
HERZ	KATHRYN	RENATE
HESSELVIK	JAN	FREDRIK
HESSELVIK	LENA	MARGARETA
HETHERINGTON	BRUCE	JAMES
HEUMAN	DANIEL	SIDNEY
HEUMAN	JUDITH.	
HEUMAN	ROBERT.	
HICKLENTON	KYLIE	ANN
HIGGINS-POSEINGER	ELIZABETH	ANN

Last name	First name	Middle name/initials
HILDENBRAND-MALLORY	ANN	FRANCES
HINCAPIE	CARLOS	ALBERTO
HINCK	JAMES	ALAN
HINES	LORRA	ANN
HINES	SAM	J
HIPPENMEYER	MARGARET	JANE
HISLOP	KRAIG	RENE
HISLOP	STEPHEN	KAYNE
HOBBS	KATHRYN	RUTH
HOBSON	DAPHNE	L
HODGDON	CELESTE	ELAINE
HODKIN	BARBARA	J
HOEFFLEUR	OLIVER	CHARLES
HOEGG	JO	ANDREA
HOEGG	JO	LYNNE
HOERLER	REMO	BEAT
HOEVENAARS	HENDRIKUS	JOZEF MARIA MILAGROS RAPHAEL
HOFFMAN	FRANK	STEPHEN
HOFFMANN	CYNTHIA	BARCLAY
HOHLFELD	FRANCOIS	EDOUARD
HOLLENBERG	ABRAHAM	ANDREW
HOLMES	GEORGE	ARCHIBALD
HOLMES	TYLER	JUSTIN
HONG	LI.	
HONNEYSETT	ZAREK	BRIAN
HOP	DENNIS	JAY
HORITA	DAVID	MCLEAN
HORNER	MATTHIEU	HENRY
HOWELLS	ELIZABETH	ANNE
HSUI	ALVIN	YU WEN
HUANG	RANDY.	
HUANG	SHEN	KAI
HUANG	SHUYIN.	
HUANG	VIVIAN	H
HUBER-KOIZUMI	NEYSA	ANNE
HUDSON	MARY	ELIZABETH
HUEBSCH	GABRIEL	MAX
HUFFMAN-FERRIS	LEE	JANE
HUG	KERRY	LYNN
HUI	CHING	YING
HUI	RAPHAEL	YULHAY
HUNTER	WILLIAM	JACK
HUOT	FRANCOIS.	
HUPPI	OTTO	EMIL
HUR	MARILYN	MINKYUNG
HURLSTONE	RICHARD	ANDREW
HUSYIN	AIMAN	ABDULLAH
HWANG	YONGSUNG.	
IKEDA	MINORU.	
ILS	AMY	YIN-MAN
IMBACH	JEFFREY	DAVID
INGLIS	ANDREA	SCOTT
INGLIS	VICTORIA	MARIE
IRVINE	MATTHEW	LEE
ISHII	MASATOSHI.	
ISMAEL	SHEREEN	TAREQ
IWAN	BARBARA.	
JACK	HEATHER	LINEA VUORINEN
JACKLING	JANE	ALLEN
JACKSON	CAMILLE.	
JACKSON	MARK.	
JACOBSON	JOSEPH	KYLE
JAEGER	JULIE	ANN
JANONIUS	TERESA	CECILIA
JARVIS	CAROLYN	MANNERS
JATIA	GANESH	NARAYAN
JAVERI	JEROME	OMAR
JAYAPRAKASH	ANAND.	
JEANTY	BERNARD.	
JEFFRIES	DALE	LOUIS
JELINEK	LARRY	CHARLES
JENNI	KATALIN	EVA
JENNINGS	ERIC	THOMAS
JODKA	NICOLE	ALEXANDRA

Last name	First name	Middle name/initials
JOHANNESEN	KARIN	EMILE
JOHNSON	AARON	JAMES
JOHNSON	ALLISON	ELIZABETH
JOHNSON	BEVERLY	EDITH
JOHNSON	MARY	EIKO
JOHNSTON	ELIZABETH	JANE
JOHNSTON	GARY	RAYMOND
JONES	ORIEL	BRONWEN CHRISTINA
JONES	RAYMON	NIGEL
JONES	TREVOR	JOHN
JOSELIN	MARY	LILIAS
JOSHI	DEVENDRA	KUMAR
JOST	LESLIE	MARGARET
JUCHIMENKO	VICTOR	JOHN
JUNKER	ALIA	ELIZABETH
KADISHAY	AMIR.	
KAMMEIJER	QUINTEN.	
KAMPEN	MARGIE.	
KANAMOTO	NORIKO	ELLEN
KANAZAWA	YUKI.	
KANG	JI	YOUNG
KAPLAN	DEBORAH	SUSAN
KAPP	NEIL	STEVEN
KARRFELT	YIVA	KRISTINA
KASHANSKI	SUSAN	HARVEY
KASS	PEARL	PAULINE
KATZ	LAURIE	MICHELE
KAUR-SINGH	MANJIT.	
KAWOHL	LINDA	J
KAYAMA	AKIRA.	
KAYAMA	MISAKO.	
KEANE	SHEILA.	
KECK	NANCY	JOAN
KECKWICK	VOLKERT.	
KEIDEL	WILLIAM	PETER
KEISER	KEVIN.	
KELLEHER	MARY	JANE
KELLERSTEIN	JENNIFER	EVE
KELLETT	JAMES	JEFFREY
KELLNER	GRETCHEN	LEA
KELLY	PHILIP.	
KENNEDY	JOHN	THOMAS
KENNEDY	LISA	RENEE
KENNIFF	PATRICK	JOHN
KENYON	VIRGINIA	J
KEPPER	ARIATI	KARINA IRINI
KEPPER	NATASHA	RAUDIA I
KERR	HELENE	PAULA
KHOURY	CYNTHIA	EL
KHOURY	NAMEER	SUHAIL
KIBLER	SUSAN	GAIL
KIERS	WENDY	ARENDINA
KILIAN	DANUTA.	
KILLER	DONNA	AGRELL
KIM	HEE	JIN
KIM	MICHELLE	MIKYEONG
KIM	OK	HEE
KIM	SIMON	YUNG JIN
KING	BRADLEY	A.
KING	ELIZABETH	CAROL
KING	ROSALBA.	
KING	SUSAN	AVERIL TAYLOR SMITH
KINGSLEY	JEMIMA	KATHARINE
KINGSLEY	OCTAVIA	ANNE
KIPER	JACQUELINE	ANNE
KIRK	JULIA.	
KIRK	MOLLY	KRISTIN
KIRKPATRICK	NEVEN	JOHN
KIRSCHNER	PAUL	ARTHUR
KIRSCHNER	TERESA	JACAS
KLEIN	URSINA.	
KLEPACKI	BENJAMIN	DAVID
KLIJN	MACHTELD	CORNELIE
KLINE	HEY	LAN

Last name	First name	Middle name/initials
KLINGE	JOHN	WILLIAM
KOECHLIN	LESLIE	ANDREA
KOELLE-SCHNEIDER	PATRICIA	IRINA
KOGGEL	CHRISTINE	MARY
KOH	GLENN	LIM-JIE
KOHL	ANNE	MARIE
KOIZUMI	SHUN.	
KOJIMA	MAKIKO.	
KOKA, JR	ASDREN	DREW
KOLLER	LAURA	ELISABETH
KON	BRANDON	RICKS JUNJIE
KONSCHAK	KLAUS.	
KOO	VICTOR	WING CHEUNG
KOPELMAN	MAGGY	KOTOK
KORB	EMILY	JIHAE
KORB	KEVIN	BURT
KORODY	KORNEL.	
KORTE	ANTHONY	P
KRAEMER	MONIKA	SUSAN
KRAHN	RHONDA	FAYE
KRALICEK	CURTIS	ALLAN
KRAUS	ERICH	PRIDAY
KRAUSSE	MICHAEL	HELMUT
KRUEGER	MARGARET	ELSIE
KRUSE	DANIELE	FRANCESCO
KUFER	KATRINA.	
KUMAGAI	KIMIKO	KODANI
KUPFERSCHMID	DENISE	MADISON
KURDI	IHSAN	KIM
KURIHARA	YUKIE.	
KURLAND	DEBORAH	JOY LIS
KURODA	ETSUKO.	
KURODA	NAGAAKI.	
KURZDORFER	BETTY	B
KWAG	RICHARD	HYUN
KWAPIL	URSULA.	
KWOK	ROY	SHUN KEUNG
LA CAZE	JOHN	THOMAS
LABONTE	NATHALIE	DENISE
LABONTE	NATHALIE	DENISE
LACERDA	MARIA	ISABEL
LACIN	TOLGA.	
LAFRANCE	CHRISTINE	MARION
LAGUE	GEORGES	DENIS
LAI	KATHERINE	LOUISE
LAI	PATTON.	
LAI	WANG-SUN	PETER
LAING	MARTHA	ZAVITZ
LALLEMENT	CLAIRE	MARIE GABRIELLE
LAMB	MICHELLE	KATIE ELIZABETH
LANDY	ALLYSON	CAROL
LANE	BARBARA	KAREN
LANE	BARBARA	SUSAN
LANE	KIM	MARIE KATHRYN
LANGER	SHELLEY	MARIE
LANGER	VIRGINIA	MARIE
LANGLEY	KARLA	LEE
LAPIDUS	SAMUEL	BENJAMIN
LAPTUTA	CHRISTINE.	
LARRIEU-LE BELLER	ELOA	JADE
LAUGHTON	FAITH	LOUISE
LAUREANO	PHILIP	ANTHONY
LAVRIL	CARINE	ANNE
LAWLER	LISA	LORRAINE
LE POIDEVIN	CHARLOTTE	ELIZABETH MASKERY
LEBLANC	PAULINE	HELEN
LEBLER	MARCUS	JAMES
LEE	ALICE.	
LEE	CHERYL	SHI-YING
LEE	CLARK	CHUN
LEE	DANIEL	DAO-MING
LEE	EUGENE.	
LEE	HAROLD	KWOK
LEE	JAY	HEE

Last name	First name	Middle name/initials
LEE	KEONHEE.	
LEE	KUG	JAE
LEE	LILY.	
LEE	MICHAEL	SUNGHYUN
LEE	RICHARD	CHI KEUNG
LEE	SABRINA	MAY CHU
LEE	SHAUN	TZEN
LEE	SHEN-LING.	
LEE	SOO	JIN
LEE AHN	HYE	KYUNG
LEEMANS	JARI.	
LEFAIVE	DOUGLAS	BRUCE
LEIB	STEPHEN	LOUIS
LEITMAN	BRUCE	HENRY
LEMMON	KELLY	BENJAMIN
LEOD-HUNTER	NEILL	SCOTT MAC
LEROUX	CELINE	MARIANNE CLAUDINE
LESHEM	AVIV.	
LESPINARD	VICTOR	MARIE
LESTARI	DORIS.	
LEU	JAMES.	
LEUNG	AMBROSE	YIN-POK
LEVESQUE	NICOLE	LYNNE
LEVIANT	MICHEL.	
LEVY	GREGORY	DAVID
LEVY	ZEEVA.	
LEWINS	SHELAGH	CHRISTINE
LEWIS	JONATHON	J
LEWIS	LOIS	ELAINE
LEYENHORST	ANNETTE	KAYE
LI	ALFRED	CHUN HEEN
LI	CHUN-YIN.	
LI	DONGXIAN.	
LI	GUO	SUI
LI	HSIEN-CHUAN.	
LI	JEFFREY	TING-HIM
LI	JING.	
LI	SIMON	CHI MING
LI	YUE	HUA
LIM	ELLEN.	
LIM	WESLEY	W K
LIN	CHIEN	JU
LIN	JAMES	CHE YU
LIN	SAMUEL	DAVID
LINCKE	CHRISTINA	GABRIELE
LINDEN	FRANK	ANDREAS
LINDENMAIER	MATTHIAS	WALTER
LINDON	ANNE	HOPE
LINDSAY	RICHARD	LYNN
LINDY	MARE	PHILLIP
LING	EDWARD.	
LING	KIRK	YU-CHI
LINNEMAYER	LISA	GAYLE
LINSKER	DURINDANA.	
LINSKER	ROBERTO.	
LINSKY	ANDREA	JOAN
LIPE	ALEX.	
LISS	ANDRE.	
LIU	CHEN	I
LIU	LEE-YU.	
LO	CARIN.	
LO	LOWELL	KWOK
LOABILE	CHRISTINE.	
LOCKE	MICHAEL	KA YUNG
LOFSTRAND	ANDERS	O
LONG	FUYOU.	
LONNEKER	MARGARET	SPRING
LOPATINSKY	ALEXANDRA	YURIEVNA
LOPEZ-APARICIO	EVA	M
LORENCAK	LENORE	LEE
LORZ	PETER	MICHAEL
LOUGHEED	ELIZABETH	LEE
LOVE	MICHAEL	LINDHART
LOVINK	ANTONY	RANSOME

Last name	First name	Middle name/initials
LOW	DAVID	JOSEPH
LOW	SHIN	YUN
LOW	STEVEN	JUN-LIN
LOWE	JAMES	LAWRENCE
LOWES	MIRANDA	ARAMINTA
LOWEY	ELIOT.	
LOZIER	KARL	DAVID
LU	AVIN	CHI-WAI
LU	MEI	HO CHEN
LU	SIDNEY.	
LUCAS	SUSAN	KAY
LUDOLPH	RONALD	JAMES
LUI	JOANNA	CLAUDIA
LUNDGREN	ZACGARY.	
LUNDIN	WILLIAM	AXEL WALTER
LUNG	JESSE	CHEN
LUPIEN	CHRISTINE	ANNE
LUSTY	DIANA	VIVIAN
LUU	PETER.	
LYNAR-REDERN	SEBASTIAN	DOMINIQUE PIUS ALBRECHT GRAF ZU
MAC FARLAND	CAROLINE	JULIA
MACAYA	ROMAN	F
MACDONALD	NANCY	ELIZABETH
MACHE	SASI	B
MACKAY	COLIN	ROSS
MACKENZIE	THOMAS	ARTHUR
MACKLIN	ADAM	DONALD
MACKLIN	LAURA	AYNSLEY
MACMILLAN	CHARLES	ALEXANDER
MACPHERSON	MARJORIE ANN	BOYD
MADDEN	ELAINE	JEANETTE
MAGALHAES	MARIANNA	CIDALE
MAHMOOD	SAIYEDA	R
MAI	BODIL	ANDERSEN
MAID	TERRY	MARC
MAINONE	MATTHIAS.	
MAIR	KATHLEEN	SHEEHAN
MAJOR	ANDREW	JAMES
MAJOR GALASSO (NEE: MAJOR)	DANIELLE	ELIZABETH
MAK	ERIC	K
MALANDRA	ESTHER	MARIE
MALCOLM	JAXQUELINE	IRENE
MALIKI	LIDIA	SYAHINDAH BINTI MOHD
MAMA-O	ABDULLAH	DERUPONG
MAMET	FRANCOISE	GABRIELLE
MANN	WILLIAM	JAGGARD CAMPBELL
MANZONI	MICHELLE	ANN
MARANTA	CARLA	JEAN STANLEY
MARBACH-HORISBERGER	ANDREA	ELISABETH
MARGIE	OLIVIA	SAMANTHA
MARGULIES	OLIVER	STEPHEN
MARION	CEDRIC	TAKEMASA
MARIZAN	MUHAMMAD	AZFAR BIN
MARJORIBANKS	CLAIRE.	
MARQUES	JANICE	MASCARENHAS
MARSDEN	STEPHANIE	ELIZABETH
MARSHALL	CHRISTOPHER	J
MARSHALL	HANNAH.	
MARSHALL	LEONIE.	
MARTEL	MARIE	MADELAINE JOCELYNE
MARTEN	WAYNE	EDWIN
MARTENS	RACHELLE	LYNN
MARTIN	DAVID	KENDALL
MARTIN	ELENA.	
MARTIN	NANCY	LOVELL
MARTZ	KRISTINA.	
MARUSIC	IVAN.	
MASON	FRANK	STEVEN
MASSEY	JONATHON.	
MAST	ALLISON	CHEYNNE
MATHIS	CHARLES	BRUCE
MATSON	BEVERLY	JO
MATSON	DONALD	HENRY
MATSUBARA	AKIKO.	

Last name	First name	Middle name/initials
MATTHEWS	JOSHUA	DAVID
MAUNULA	TIMOTHY	LAWRENCE
MAXSON	JACK	DANIEL
MAZZANTI	VIRGINIA	MARIA
MC CLENNAN	SUZANNE	ELIZABETH
MC INTURFF	MARC	TREMAYNE
MC NAMARA	PATRICIA	ANN
MCADAMS	SHELBY	LYNN
MCCAIN	HILARY	JOAN NORRIE
MCCLEAR	MARY	EILEEN
MCCONNELL	GEORGE	MARK
MCCORD	KRIS	ELAINE
MCCREERY	ELIZABETH	KATHERINE ROSE
MCDONALD	KARLENE	KAY
MCDONALD	SARAH	DIANA
MCDOWELL	KENNETH	GEORGE
MCFARLANE	JANA	PATRICIA
MCFETRIDGE	BRENDA	LEE
MCGRAIL	SHANN	KATHLEEN
MCINTOSH	STUART	B
MCLAREN	CANDACE	JOYCE
MCMURTRIE	KATHLEEN	ANNE
MEGER	CATHERINE	MARIE
MEGNET	LIENHARD	ANDREAS
MEIJER	EVELINE.	
MEIJIDE	MARIANA	GARCIA
MELO	FEDERICO	FERNANDO
MENDES-SILVA	ANDRE.	
MENDEZ	GLORIA	P
MENDEZ	PATRICIA	F.
MENZ	FRANCES	GRAVES
MERCER	ASHLEY	MEGAN
MERCER	CHERRIE.	
MEREDITH	PETER	LOUDON
MERREN	SUZAN	ELIZABETH
MESHANKO	TRACY	LYNN
MESSIG	GERALDINE.	
METZ	EDUARDUS	A
MEUTER	DEMIAN	RICO
MEYLAN	JOELLE	ELIZABETH FALCONNIER
MICHAUD	JAMES	CARROLL
MICHEL	STEFAN.	
MICHELSON	SOPHIE	ENOCH
MICHENER	ALICE	BERYL
MICHENER	ROBERT	ROWLAND
MIGEM	TOM	VAN
MIKUS	CHRISTOPHER	ALFONS
MILFORD	SIDNEY	NEVIL
MILLER	BROOKE	ANDERSON
MILLER	DARL	EUGENE
MILLER	DAVID	JONATHAN
MILLS	MARGARET	JEAN
MILNE	JOHNNA	MARIE
MINARD	PHILIPPE	HUGUES PIERRE
MINER	ANNE	BRIDGET
MINIHAN	SEAMUS.	
MINZ	PERL	RACHEL
MISSIG	LEIGH	ALEXANDRA
MITCHELL	CELINE	BRUYETTE AKINER
MITCHELL	RAYMOND	FLOYD
MITTEN	RICHARD	CHARLES
MIYAZAKI	TAKASHI.	
MODEL	PHILIPPE	DANIEL
MOFFETT	MICHAEL	JAMES
MOLLNAU	NORA	R
MOLONEY	ADRAIAN	M
MOLONEY	PATRICIA	H
MONGES	GUILLAMUE	PAUL
MONNIER	ANTOINE	BLAISE
MONTGOMERY	BENJAMIN	P
MONTGOMERY	CARLA	MARIE
MOORE	CHRISTOPHER	MICHAEL
MORAES	THOMAS	MOSANER DE SOUZA
MORD	JASON	THOMAS

Last name	First name	Middle name/initials
MORET	EDOUARD	CLAUDE
MORRIS	ETHEL	ANNE
MORRIS	LYNNE	SUSAN
MORRISON	PETER	KYLE
MORRISROE	JAMES	JOSEPH
MORTIER	JOHANNES	WILHELM
MOSCONA	TAMARA.	
MOSHINSKY	SIDRA	KRANZ
MOTOE	TAICHIRO.	
MOUNTS	VICKI	DEBRA
MUELLER	BRIGITTE	SABINE
MULGREW	AYISHA.	
MULLAN	SUSAN	LUCILLE
MUNCK	CAMILLE	ANAIS
MURRAY	NICOLE.	
MUSACCHIA	CHRISTINA	ANNE
MUSITANO	KORRIE	ANN
NADESWARI	YEESHA.	
NAEGELIN	THOMAS.	
NAGATA	KEIKO.	
NAGGIAR	CAROLINE.	
NAM	LINDA	YOOSEON
NAM	NAN	SOOK
NANCHEN	BEATRICE	ANNE KERN
NAUGHTON	DENIS	PATRICK
NAY	BRETT	KYLE
NAYAR	KAMALA	ELIZABETH
NAYAR-KINGWELL	SUNITA	MARIA
NAZER	HISHAM	LOAY
NEE	EVGENYA.	
NELSON	NAOMI	ALEXANDRA
NEPI	MONICA.	
NESBITT	CHERYL	ANN
NEUFELD	MARJORY	AMELIA
NEUHAUS	SCOTT	RICHARD
NEUMAN	ARAVINDA	DAVID
NEUMAN	JOSEPHINE	ANN
NEWCOMBE GIROUX	PETER (AKA PIERRE).	
NEWMAN	AMANDA	JANE
NG	EVA	YEE MAN
NG	MAN	FUNG
NG	MATTHEW	CHER-WAI
NG	NICHOLAS	HON BOON
NG	SIMON	SIU-MING
NG	SZE	NOK SENIA
NG, JR.	MATTHEW	TAM TAN
NGUYEN	ANDREWS	LINH
NIBLER	JONATHAN	MICHAEL
NIDAY	JODI	MARIE
NIDAY	MICHAEL	WALLACE
NIDEROEST	PETER	DWIGHT
NIGRO	LEONARDO.	
NIR	MICHAL.	
NISSEN	CHRISTOPH	PETER
NONHOF	ROBBERT	FRANK
NOTZ	RYAN	ANDREW
NOVA	ANDRE.	
NOWICKI	BROOKE	HARMON
NOWINA	CYNTHIA	ANN
NOWINA	KATHRYN	DOROTHEA
NUGENT	PAUL.	
NUZZI	PETER	ANTHONY
O'CLEIRIGH	MARGARET	ELIZABETH
O'CONNELL	KEVIN	ALLEN
OCONNOR	LARKEN.	
O'DOWD	MICHAEL	PATRICK
OESTERREICHER	KATHARINA	ALEXANDRA
O'HARA	ANDREW	NEIL
OHNO	KEIKO.	
OKAWA	TERUMI	TERESA
OLIVARI	RINALDO	MICHELE
OLIVEIRA	ANA	SOFIA TAVARES
OLIVER-WORLF	WYATT	SIR RED
OLSSON	ERIK	ALEXANDER

Last name	First name	Middle name/initials
OMMANNEY	RAGNII	INGELA
OMURA	EIKO.	
ONDRACEK	JAY	LYLE
OOI	YU	TING
OPHEIM	GILBERT	EARL
O'REILLY	GERALD	V
ORSKI-SCHULE	JOCELYNE.	
OTT	KAREN	ELAINE
OTT	KENNETH	RICHARD
OTT	MAUREEN	AGNES
OUBOTER	JUDITH	DE BRUYN
OZAKI	MIKIO.	
PAEK	ALEX	HAEIN
PAETKAU	DAVID	GEORGE
PAIJENS	KELLY	S
PAJAROLA	RICCARDA	CRISTINA
PALLIER	ANTHONY	GILLES
PALTIN	OLEG.	
PAN	OLAI	WILLIAM VANDER
PANG	JEAN	SUI-KAM
PANG	MOIRA	SZE-MIN
PANU	ANUKUL.	
PAPIA	LOUIS	JOSEPH
PARBHAKAR	NEENA.	
PARENT	CLAUDE.	
PARK	EUN	JOO
PARK	JIEUN.	
PARK	MARGARET	MARY
PARK	SEAN.	
PARK	SUSAN	ARAH
PARKER	MOIRA.	
PARLETTE	DIANE.	
PASCAL	PHYLLIS	BARBARA
PASQUIER	MAXIME	KILIAN LEO
PASS	DOUGLAS	JOHN
PATEL	ANKIT.	
PATEL	PRAKASH	CHANDRA
PATEL	VIDHYA	H
PATON	SUSAN	LINDA
PATTERSON	LIANE	HOLLY
PATTERSON	ROBERT	COLIN
PEACOCK	PAUL	S
PEGGS	JONATHAN	KENNETH
PEI	JINLIN.	
PELLEGRAM	ANDREA	ANN
PENNINGTON	WILLIAM	HAROLD
PEPIN	MICHELLE.	
PEPPERDAY	ANITA	BEATRICE
PERALTA	LUIS	FERNANDO
PETRY	JOSEPHINE	DONNA
PETTY	STEVEN	FABIO
PETURSSON	CLAIRE MARIE	ELIZABETH
PEYER	ANN	DOROTHY
PHILLIPS	REBECCA	NOEL
PIASECKI	WOJCIECH.	
PICARD	PIERRE	FRANCOIS
PIETSCH	JACQUELINE	JEANETTE
PILLOUD	CHLOE	MICHELLE ARLETTE
PISTRANG	NANCY	ELLEN
PIZANO	OLGA.	
PL	CHEIN	YAO
PLANTE	FRANCOISE	YOLANDE MARIE
PLENERT	DELORES	JEAN
PLOUFFE	LINDA	MARIE
POCZA	VERONICA	BLISS
POLIKAR	GREGOIRE	LUCAS
POLLACK	SHOSHANA	LISA
POMMEPUY	GILBERT	JOSEPH
POMPER	RUDY.	
POPOFF	VICTOR	ALPHONSE
PORTER	CAITLYN	MARIE
PORTER	NINA	I
POSEN	GAIL	ESTHER
POSTMA	KARISSA	EVELYN

Last name	First name	Middle name/initials
POSTMAN	KAREN	LORENE
POULIN	DANIEL	JOSEPH
POULIQUEN	MAELAIG	SANDY
PREISWERK	FRANK	ANDREAS
PRIETO	LUIS.	
PROUT	BRINA	LUDWIG
PSYCHOYOS	NICHOLAS	ANTHONGY
PURVIS	KARI	KRISTI
PUTTICK	JENNIFER	LINDSAY
QUADRI	ROGER	UGO
QUAIL	KEVIN	STEVEN
QUAN	ANDREW	KEO
QUARTEY	MONA	HELEN KABUKI
QUEK	KARA	TZE-MIN
QURAINI	SAMEER	ABDUL MUTI
RABSON	YOKO.	
RADFORD	STEPHEN	JAMES
RAGGHIANTI	BRETT	ROBERTS
RAGHAVAN	VEERAVALLI.	
RAGUSH	SHEILA	JEAN
RAJU	SANGEETA.	
RAMAGE	JOCELYN	A
RAMAGE	WILLIAM	D
RAMANATHAN	SRINIVAS.	
RAMIREZ-AITKEN	YAZMIN	MARIA
RAMSDEN	JOYCE	ELAINE
RAMSMEIER	ELVIRA	DOLLY
RANK	ESTHER	JEAN WILKINSON
RAPPAPORT	DANIEL	CHARLES
RASHEED	AHMED	MOHAMMED
RAUM	MARC.	
RAYNER	GEORGIA	ALEXANDRA
REED	DANIEL	HARRY
REED	RONALD	RAY
REGE-VOLPE-DEPIERRE	FRANCES	MARIE
REHAK	JOHANNES	BLAKE
REICHSTEIN	ESTHER.	
REILLY	PAULA	BRID
REMBAUD	MONIQUE	ELIZABETH
REMENYI	LINDA	JEAN
RENAULT	CATHERINE	GISELE
RENTROP	CHRISTINE	MARIA
REUNIS	MARC	RENE BRUCK
REUSSER	PETER	ULRICH
REZNICK	SHULAMITH.	
RHEE	WON	JAI
RIADY	JOHN.	
RICE	THOMAS	UMAR
RICHARD	MARIE-JEANNE	OONA
RICHER	LAURIE	PAMELA
RICHESON	DAVID	RANDALL
RIEBESELL	MABEL	VIOLET THELMA
RING	CURTIS	PHILLIP
RING	JACQULINE	KAE
RIOUX	GILES	ROGER
RITTER	KARL	THOMAS
RITTER-GEKELER	MARIELE	JOYCE
RIVET	ALAIN	CHRISTIAN ROGER M.Y.G
ROBERTS	CAMILLE	M.
ROBERTS	JAMES	A.
ROBERTSON	AMANDA	JANE
ROESEL	TAMARA	LISA
ROESLER	WILLIAM	JAMES
ROESSEL	LILI	MARIE
ROGERS	ERIN	LYNNE CRYDERMAN
ROMAIN	KARINE	MICHELINE-MARIE
ROOLVINK	SHAUNA	LI
ROOSDORP	THOMAS	NICOLAAS
ROSEN	JUDITH	ROSE
ROSENBAUM	LEAH	BLIMI
ROSS	KELLY-ANN.	
ROSS	ROBERT	COLLINS
ROSS	TANNICE	ROBERTA
ROSSELLI	MARK	CHARLES

Last name	First name	Middle name/initials
ROSSELLINI	EDVIGE	FORTI
ROSSETTI	JOHN	EDWIN
ROSSI	GERALD	FRANCIS
ROTH	CATHERINE	SYLVIA
ROTHUIZEN	LAURA	EUGENIE
ROUSE	PETER	E.
ROUSSEAU	ERIC	JOSEPH
ROUYER	NATHALIE	SHARLEEN
ROVIRA	FRANCISCO	ARNER
ROWE	ALLISON	MORGANNE
RUBENSTEIN	ANDREA	DIANE
RUDD	GERIANNE.	
RUFF	MARCUS	STEPHEN
RUNDLE	ELIZABETH	GALE
RUPP	MARTIN	WILLIAM
RUSCH-MUELLER	BARBARA	CAROL
RUTHER	POLLYANN	S
RUTLEDGE	JARED	CLINTON
RUTLEDGE	JESSICA	DIANNE
RYAN	MICHAEL	EDWARD
SABIDUSSI	MENEGA	JOHANNA
SABRI	ALAIN	N
SACHDEV	ARJUNN	SINGH
SACKELA	ROSE	MARIE
SALANT III	ROBERT	STEPHEN
SALAS	DENNIS	MICHAEL
SALERNO	CORRIE	LYNN
SALKAUSKAS	IISE.	
SALTIEL	MICHAEL	ARI
SAMAWI	HISHAM.	
SAMAWI	MARGIT	URSULA
SAMAYOA-USHER	ISABELLA	CATARINA
SAMBOL	LINDA	MARIE
SAMOLUK	SARAH	ELIZABETH
SANDERS	DANIELA	CATHERINE JANE
SANTOS	MARK	DONALD
SASAKI	MANAMI.	
SAUNDERS	FRASER	WORDEN
SAUNDERS	PHILLIP	ROSS
SAVANT	JAYASHREE.	
SAVANT	SANDESH	RAQHUNATH
SAYER	ROWANNE.	
SCHERER	NELLY.	
SCHIESS	CHRISTIAN	DOUGLAS
SCHIESS	CHRISTOPHER	ROBERT
SCHIFF	KALMAN.	
SCHIFF	LEORA	ORA
SCHILCHER	OSKAR.	
SCHILD	BRIGITTE	ANNEMARIE
SCHILD	MARLEN	ELIZABETH
SCHLESSINGER	LAURA	ANN
SCHMID	LUKAS	ANDREAS
SCHMIDLIN	MOLLY	MOORE
SCHMIT	FREDERIC	HENRI
SCHMITZ	ROSINE	MARIE
SCHNEIDER	HENRY.	
SCHOCH	ERIC	GUSTAV
SCHOENENBERGER	MIRIAM	JOHANNA
SCHORNO	KATHLEEN	MARIE
SCHORNO	TAYLOR	RYAN
SCHRIEVER	FOLKE.	
SCHROEDER	CARRIE	ELIZABETH
SCHROPP	MANFRED.	
SCHUBERT	GERSENDE	ANNE-AYMONE
SCHULZ	EUNICE	JEAN
SCHWARTZ	ARNOLD.	
SCHWARTZ	ELLEN	RAE
SCHWARTZ	WILLIAM.	
SCHWEIZER-CARUSO	JENNIFER	SARAH
SCHWOB	MARC	JOSEPH
SCOTT	RAYMOND	JOHN
SEATON	SUSAN	JANE
SEHIC	SABAN.	
SEHN	NOLA	ROXANNE

Last name	First name	Middle name/initials
SELBIG	BEATE	LOTTE
SELDON	HENRY	LEE
SEMELMAN	ELYSE	NICOLE
SEMELMAN	STEVEN	ALAN
SERVAIS	JUERGEN.	
SERVAIS	VIVIANE.	
SHADEED	GERALD	NICHOLAS
SHAH	RAVIN	MINESH
SHAIKH-OMER	MAJID	ABDULRAZZAQ
SHAIR	TALAL	KAMAL
SHANNON	JAMES	WILLIAM ANTHONY
SHAPS	ALEXANDER	PHILLIP KEN
SHARMA	KRISTINA	SUE
SHARP	PATRICK	RODNEY
SHATZKES	PAMELA	JOY
SHAW	PAISLEY	TERRA
SHEETS	ALAN	WAYNE
SHEN	AI	KEN
SHEN	MEI-MEI.	
SHEPHERD	MICHAEL	ALAN
SHETH	MAHENDRA	CHHOTALAL
SHIELDS	EDWARD.	
SHIMMURA	MITSUYO.	
SHIN	HYE	JIN
SHIN	LAUREN.	
SHIN	SANG.	
SHINER	JOHN	STEWART
SHIPNOSKI	ANDRE	FRANCIS
SHIU	ANGELA	YUEN YUEN
SHLADOV	TAL	GOTTINER
SHUI	DI.	
SHULTZ	THOMAS	RICHARD
SHUM	JERRY.	
SIDDALL	GERALD	NOEL
SIDDALL	NAMICE	MOIRA FLEEK
SIDENBERG	CHERYL	LEIGH
SIGNER	CHRISTOPHER.	
SILBERMAN	MIA	HELEN
SIM	SOON-SONG	TIMOTHY
SIMPSON	MARYANN.	
SINCLAIR	KIRI	VICTORIA
SINCLAIR-LAPPI	KRISTA	STEPHANIE
SINGAL	SUNIL	HEINEN
SINGH	GURDIP.	
SKOLDEBRAND	CATHARINA	ELISABETH SANDSTROM
SKREINIG	MARILIA	AISLYNN RIBEIRO
SLATNER	NICOLE	A
SLEESWIJK	FRANCES	CORINE WEGENER
SLOAN	SONNEN	MARCELLA
SLOAN GELDARD	MILES	ANTHONY
SMALL	CHARLES.	
SMALLEY	PAMELA.	
SMITH	BRUCE	M
SMITH	DAVID.	
SMITH	INESE	AUZINS
SMITH	JASON	GERALD
SMITH	NANCY	EILEEN ANNE-MARIE MORRISON
SMITH	RONALD	CLINTON
SMITH	RUTH.	
SMITH	SAMUEL	TRAINOR
SMYKE	PAUL	JOSEPH
SNIDER	DUSTIN	LEE
SNOW	SOMER	JACLYN
SNOWER	DAVID	BERNARD
SO	JANET	KWAN
SOLLBERGER	CALVIN.	
SOMMER	JENNIFER	JOANNE KAYS
SOMMER	LAURENT	HUBERT
SOMMERS	KATJA.	
SONG	REY-LIN.	
SOPHONPANICH	SIRIPORN.	
SORENSEN	NIELS.	
SORENSEN	SUZANNE	CAROL
SORRELL	EMMA	JANE

Last name	First name	Middle name/initials
SOUKUP	JULIAN	HENDRIJ
SPENCER	KRISTEN	LYNNE
SPERBER	DAWN	LEIA
SPILLER	YUKO.	
SPINGLER	ROLF	ARNOLD
SPRINGATE	CHARLOTTE	A
SPYROPOULOS	CHRISTINE.	
ST GEORGE	FIONA	MICHELLE
ST LAURENT	DENISE	MARIE-EVELYNE
STACEY	ASHLEY	LYNNETTE
STADELMANN	MARK	BRIAN
STALKER	JOHN	GARRETT
STAMENOV	VALENTIN	I
STAMP	ALTHEA	PATRICIA DAWES
STANBURY	SUSAN	MARY
STANIFORTH	SEAN	MICHAEL
STANNER	NICOLE	MIMI
STARINK	INGRID	E
STCHEDROFF	NIELS	DANIEL
STEEGMANN	KEVIN	RAY
STEGGLES	MARY	ANN
STEIG	ASAKO.	
STEINMETZ	LINDA	MAE
STEINMETZ	NICO	PIERRE
STEINREICH	AUDREY.	
STEINREICH	GARY	ABE
STENIG	JOHN	MARC
STERCK	KATHERINE	ELIZABETH
STERRETT	JAMES	ROGER
STEVENS	MARIE	ELISABETH
STEWART	GARY	DOUGLAS
STEWART	JO-ANNE	MARGARET
STIENSTRA	CAROLYN	SUE
STOBBE	PAULINE	GWEN
STOCKDALE	JANE	CHURCHILL
STOLL	LIISA.	
STORK	FRANCOIS	GERARD
STORK	PAUL	JACOB
STOUFFER	DONALD	JAMES
STRATH	LORIE	BELL
STRAUGHAN	TIMOTHY	ASHBY
STREBEL	STEPHEN	CURT
STRILCHUK	GLADYS	MARY
STUART	PHILIP	FRAZER
STUBBLEBINE	ROBERT	HARVEY
STUBBS	IAIN	PATRICK
STUBBS	ROBERT	LAWRENCE
SUGASAWA	CHIEKO.	
SUGASAWA	KIYOSHI.	
SUHEIBANI	JANAN	ABDUL-RAHMAN
SUKRI	EDWIN.	
SULLER	GARETH	DAVID
SULZER	ALFRED	ROBERT
SUN	TIFFANY	CHYI-HONG
SUNG	SOPHIA.	
SUNG	TAE	RAN
SUSSI	GIAN	MARCO
SUTTER	LYDIA	MARIA
SUZUKI	TAMIKO	LYNDA
SWEENEY	MARY	ALETHA
SWIFT	KAREN	JUDITH
SWITZER	ELINOR	NATALIE
TAJIRI	MAI.	
TAKEZAWA	NAHOYA.	
TALMAGE	WILLIAM	STUART JOHN
TAM	ALESSANDRA.	
TAN	AUDREY	POH POH
TAN	LI	CHING
TAN	SANDRA	VUOCH HONG
TANG	SUSAN.	
TANKOANO	JEAN	LUC
TANNENBAUM	JEREMY	ADAM
TARRANT	SETH	MICHAEL
TATE	STEPHEN	ANDREW

Last name	First name	Middle name/initials
TATEISHI	TOMONORI.	
TATEISHI	TOSHIKO.	
TATHUM JR	DANIEL	RICHARD
TAY	BRYAN	YAN KEAT
TAY	XI	CHING
TAYLOR	CHLOE	EMMA
TAYLOR	ELIZABETH	COLSTON
TAYLOR	TANA	MARIE MCCOY
TAYMANS	JOSEPH	MARIE
TEAL	PATRICIA	KATHLEEN
TEBO	STEPHEN	L.
TEGEL	SUSAN	LOUISE
TEMES	MARVIN	JOHN
TEO	ANNABELLE	XIANG-PING
TERASHIMA	HISASHI.	
TESTERMAN	DONNA	MARIE
THAI	JULIE	HONG-HANH
THAM	BRIAN	KAR LEONG
THERRIEN	GUY	ALYRE
THERRIEN	SUZANNE	MARIETTE
THOMANN	ERIC	VALENTIN
THOMPSON	IAIN	ROY
THOMPSON	SARA	JANE
THOMPSON	TANYA	RACHEL TAUB
THORNE	LORRAINE	MARY
THORNTON	ELISABETH	ERIKA
TING	WENDY	WAN-CHUN LIAO
TIZ	ATARA.	
TOLOMEO	DOMENICO	PIETRO
TRAN-BA-HUY	SANDRINE	OLIVIA
TRAVIS	TERRA	RENAE
TREMP	MARTIN.	
TREMP	NELLY.	
TRINE	NATHALIE	LUCIENNE
TROTTIER	JEAN-PAUL.	
TROXEL	BRIAN	MARCEL
TROXEL	LINDA	FAITH
TSCHAN	COLLEEN	DURAN
TSUI	DENISE	HIU TUNG
TUCKER	BENJAMIN	CHARLES
TUCKER	DELTON	RAY
TUPE	SAMBHAJI	RAGHUNATH
TURNBULL	RICHARD	BRIAN
TURNOVSZKY	HANS	DOMINIC
TUSCHER	GABRIELLE.	
TYLER	LYNN	KATHLEEN
UEHARA	NOBUYUKI.	
UHE	ROBERT	ERICSON
UHLIG	DANIEL	ALEXANDER
UIKE	KYOKO	NADJA
UNGER	SHARON	JOY
URGOITI	MARTIN	MARIA
UVIMOLCHAI	CHAISIRI	ALEX
VACHON	JACQUES	PIERRE
VAIO	ERNEST	LLOYD
VALLECOCCIA	GUGLIEMINA	CLOTILDE
VALLIERE	VICTORIA	J
VAN BAKEL (NEE: CROWLEY)	MARGARET	ELLEN
VAN DAM	BRONWYN	MARY
VAN DER MEULEN	BEVERLY	J
VAN DER MEULEN	JOHN	ERNEST
VAN DER MEULEN	MARK	A
VAN HOLST	RUTH	JANKE
VAN LENT	ANNE	MARIETTE
VAN OSTRAND	CHRISTOPHER	ALAN
VANDENBERG	ELEONORA	CHRISTINA
VANON	CAROLINE.	
VARADI	STEPHANIE	BEATRICE
VAUGHN	SARA	THERESE MELIA
VEHOVAR	LARA	TIA
VEILLEUX	LISA	MARIE
VELONA	MADDALENA	AGNESE
VEREY	KATRINA	NICOLE
VERNON	PHILIP	CLAUDE

Last name	First name	Middle name/initials
VICUNA	RAFAEL	AUGUSTO
VILCHIS	GIOIA	FRANCESCA DEUCHER
VILLANUEVA	GIOVANNA.	
VIRGILIO	PATRICIA	ANN
VISSCHER	SHARLA	MARIE
VIZCARRA	RACHEL	MARIE
VOCKEROTH	NADINE.	
VOGT	NICOLE	BARBARA FERRIER
VOITH	STEPHAN	GERHARD
VOLIO	JULIAN.	
VOLLEY	AXEL	WERNER
VOLLMER	SEBASTIAN	RALF
VON DER SCHULENBURG	FELICIA	FREDERICA
VON EUW	NANCY	VERNA
VRBENSKY	CYNTHIA	MAY
WACHTER-BODENSTEIN	MARIA	CHRISTINA
WADY	KATHRYN	MAY
WAEBER	SABINE.	
WAGSTAFF	DAVID	IAN
WAHLBACK	PETER	RICHARD
WAKEMAN	JEFFREY	ANDREW
WAKEMAN	OLGA.	
WALDNER	DAVID	JOSEPH
WALDSTEIN-WARTENBERG	NICOLETTE	ALICE
WALFISH	SHLOMO	DAVID
WALKER	CHARLES	TERRENCE
WALKER	GAY	PARSONS
WALKER	JACQUELINE	TALIA
WALKER	SCOTT	BRADLEY
WALL	ANN	MARIE
WALL	HENRY	BENJAMIN
WALLER	JOAN	RUTH
WALSH	NICHOLAS	MATTHEW
WALSH	SUZETTE	MARIE
WANG	ALVIN	TSAIHSIANG
WANG	ANN-JIUN.	
WANG	ARTHUR	X
WANG	BIN.	
WANG	DAVID.	
WANG	EDMOND.	
WANG	HUA	FENG
WANG	JIMMY	B
WANG	QINGGANG.	
WANG	SAMUEL	SHAO-EN
WANG	YAJUN.	
WANGSAWIDJAJA	EILIEN.	
WANTO	GRACE.	
WARDWELL	DOROTHEA.	
WARREN	KEVIN	MARION WILLIAM
WASSMER	MARTINA	LINDA
WASSMER	PETER	J
WATCHUS-LANDIN	MINERVA	SIERRA
WATKINS	TRACEY	L
WATTS	SETH	ROBERT
WEBER	IEITH	WILLIAM
WEBER-FROBOESE	IRENE	M
WEEKS	JONI	KAY
WEEKS	SUZANNE	ELIZABETH
WEIL	BETTY	MOLLY
WEISS	RICHARD.	
WEITZ	DANIEL	SHEA MASTERSON
WELLBELOVED	LORELEI	DIAN
WELTER	SALLY.	
WEN	ZHONG.	
WENER	SARAH.	
WENG	MICHAEL	CHIA-TE
WENNBERG	INGA	ELIZABETH
WERNER	LISE	MARIE
WEST	ANTHONY	PAUL
WHALEN	DIANA	CAROLINE
WHEATLEY	SIMON	CHARLES
WHEELER	MELANIE	ANN
WHETTER	CHRISTINE	RAE
WHITE	ANDREA	LOUISE

Last name	First name	Middle name/initials
WHITE	JUDITH	ANNABELLE
WHITE	KATHERINE	EVE
WHITE	LAURA	ELIZABETH
WHITE	TYLER	JAMES
WIDERMAN	JANE	NANCY
WIDMER	STEPHAN.	
WIENS	CHERYL	LYNN
WIESENTHAL	JOSHUA	DANIEL
WILHELM	JANE	ELISABETH
WILLEMS	THILO	MARTIJN
WILLIAMS	RACHEL	CARON
WILLIAMS	VICTORIA	ROSE
WILSON	ALICE	PO
WILTSCHUT	JOHN.	
WINAND	YVONNE	LESLEY
WINGERT	CLARENCE	JOHN
WINGET	CATHERINE	GWEN
WINSOR	INA	GAIL BLITZ
WINTER	AJKE	NAOMI
WINTER-DESCHAMPS	SABINE	CHRISTIANE
WOGSBERG	LA VERIA	HATTIE
WOLFE	THOMAS	WILLIAM
WOLKEN	GEORGE	MATHEW
WOLLEB	ALFRED.	
WONG	CLAUDIA.	
WONG	WEI	HENG BRYAN
WOO	LAWRENCE	HING-KEUNG
WOO	TIFFANY	TAK YUNN
WOOD	SCARLETT	BURWELL
WOODCOCK	LINDA	MARIE
WORKUM	JESSICA	DORIS
WRIGHT	PATRICK	LEE
WRIGLEY	KEVIN	JOSEPH
WU	DENNIS.	
WU	SHU	MEI
WU	YIO	YING
WUERMLI	KAREN	POTTER
WYDER	MARIAN	LEONIE
XU	YING.	
XU	ZHIHAN.	
XUEREB	JOSEPHINE.	
YAFFE	DEBORAH	RACHEL
YAMAKI	HIROSHI.	
YAMAKI	TOMOKO.	
YANG	CHIEH	KAI
YAO	TIFFANY	LU
YAP	KAH	YEE
YARISAL	LENORE	THERESA
YEE	HOWARD	HO WAN
YENNY	FRANCOIS	JACQUES
YEO	SAMANTHA	KE WEN
YETERIAN	CHARLES.	
YOO	CHORONG.	
YOUNESS	AMRE	ABDELHAMID
YOUNG	CHARLENE	KATHARINE
YOUNG	JOHATHAN	HOLMAN
YOW	RYAN.	
YU	ARTHUR	YUNG LIN
YU	RANDY.	
YUEN	PETER	CHARLES
YUZAWA	HIDEKO.	
YUZAWA	MUNEYASU.	
ZACHARIAH	LOIS	CATHERINE
ZAHEDIVASH	FARIBA.	
ZAHID	FAISAL	M
ZAININGER	LOUISA	MARLEN
ZALSMAN	BARUCH	NERI
ZAPHIRIOU-ZARIFI	HEBA	JADE
ZAVADIL	ANNE	DESIREE
ZEASER	DONALD	BRUCE
ZEE	JENNIFER.	
ZEHNDER	BRANDON	DILLON
ZHAI	JIANPING.	
ZHANG	JING.	

Last name	First name	Middle name/initials
zhang	yuhong.	
ZHANG	ZISHU.	
ZHU	XUPING.	
ZIADEH	NEDA	BASSEM
ZIMMERLI-NING	MAY	KERMAI
ZOBEL	JILL	ANNE
ZOBELL	MICHELE	THOMSON
ZUECKER	NICHOLAS	WERNER
ZUKER	GENEVIEVE	LORRY
ZURBRIGGEN	LEA	REBECCA
ZURBRUEGG	MARK	ANDRE
ZWEIFEL	PATRICIA	ERIKA

Date: July 24, 2017.

Maureen Manieri,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2017–16318 Filed 8–2–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning certain transfers of property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

DATES: Written comments should be received on or before October 2, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

OMB Number: 1545–1672.

Regulation Project Number: T.D. 9047.

Abstract: The regulation applies with respect to the net built-in gain of C corporation property that becomes property of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of property of a C corporation to a RIC or REIT in certain tax-free transactions. Depending on the date of the transfer of property or qualification as a RIC or REIT, the regulation provides that either (1) the C corporation will recognize gain as if it had sold the property at fair market value unless the RIC or REIT elects section 1374 treatment or (2) the RIC or REIT will be subject to section 1374 treatment with respect to the net recognized built-in-gain, unless the C corporation elects deemed sale treatment. The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the taxable year in which the property of the C corporation becomes the property of the RIC or REIT. The regulation provides that a deemed sale election is made by filing a statement, signed by an official authorized to sign the income tax return of the C corporation and attached to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 140.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 70.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–16306 Filed 8–2–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: D–11869, Liberty Mutual Insurance Company; and D–11916, Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RICap), and their Affiliates.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent via mail to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. NW., Suite 400, Washington, DC 20001. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *e-OED@dol.gov,* by FAX to (202) 693–8474, or online through *http://www.regulations.gov* by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Liberty Mutual Insurance Company

(Liberty Mutual or the Applicant)

Located in Boston, MA

[Application No. D–11869]

Proposed Exemption

The Department is considering granting an exemption under the authority of 29 U.S.C. 1108 (section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act)) and 26 U.S.C. 4975(c)(2) (section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code)), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[2] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department. If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan sponsored by Liberty Mutual or its affiliates (the Liberty Mutual Plan) and such Liberty Mutual Plan, as described in Part I of Prohibited Transaction Exemption 96–23 (PTE 96–23),[3] provided that the in-house asset manager (INHAM) for the Liberty Mutual Plan has discretionary control with respect to plan assets involved in the transaction, and certain conditions are satisfied.

Summary of Facts and Representations[4]

Background

1. Liberty Mutual is an insurance company domiciled in the

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to the provisions of section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[3] 61 FR 15975 (April 10, 1996), as amended at 76 FR 18255 (April 1, 2011).

[4] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

Commonwealth of Massachusetts, engaged primarily in the provision of property and casualty insurance. Liberty Mutual is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc. (Liberty Mutual Group), which, together with its subsidiaries and affiliates, is a diversified global insurer. Liberty Mutual Group is based in Boston, Massachusetts and currently operates in 30 countries, with approximately 900 offices worldwide and over 50,000 employees.

2. Liberty Mutual Group established the Liberty Mutual Retirement Benefit Plan (the Retirement Plan) in 1951 in a consolidation of the Employees' Retirement Annuity Plan of Liberty Mutual, Liberty Mutual Fire and the Liberty Mutual Supplementary Pension Plan. Liberty Mutual represents that the Retirement Plan is a defined benefit plan providing benefits based on a cash balance formula and a final average pay formula. Liberty Mutual states that, as of December 31, 2014, the Retirement Plan had assets valued at $6.24 billion with 77,244 participants and beneficiaries covered. Liberty Mutual represents that, prior to the enactment of ERISA, the Retirement Plan was funded under, and its assets were invested pursuant to, a group annuity contract. Liberty Mutual represents that the Retirement Plan continued to be funded and managed through the use of a group annuity contract, until 2011, when the assets of the Retirement Plan were transferred to a trust, the Liberty Mutual Retirement Plan Master Trust (the Trust).[5] According to Liberty Mutual, in 2011, Liberty Mutual established a separate investment management subsidiary, Liberty Mutual Group Asset Management Inc. (LMGAMI), described in more detail below, which was appointed as the Retirement Plan's investment manager. The Bank of New York Mellon became the Retirement Plan's trustee.

LMGAMI

3. Liberty Mutual represents that LMGAMI became a registered investment adviser (an RIA) under the Investment Advisers Act of 1940, as amended (the Advisers Act) in May 2011. According to Liberty Mutual, there were several unrelated business objectives that motivated the decision to register LMGAMI as an RIA. First, Liberty Mutual owns a number of entities operating in, and incorporated under the laws of, non-U.S. jurisdictions. Liberty Mutual represents that, as with its U.S. operations, Liberty Mutual's preference is for LMGAMI to manage its assets internally in conjunction with the assets of other Liberty Mutual affiliates. Liberty Mutual states further that, at the time the decision was made to register LMGAMI as an RIA, the benefits derived from being able to internally manage more of Liberty Mutual's foreign operations, as well as the fees associated with managing institutional third party money, was expected to offset the financial, administrative and regulatory burdens associated with LMGAMI being an RIA.

Furthermore, Liberty Mutual states that LMGAMI's registration as an RIA provided the collateral opportunity to transfer the assets of the Retirement Plan to a trust and to appoint LMGAMI as the Retirement Plan's discretionary investment manager, as permitted under ERISA. Liberty Mutual states that investing the assets of the Retirement Plan through an independent trust could provide the Retirement Plan access to investments that were otherwise not permitted or practical under the terms of a group annuity contract. When LMGAMI became an RIA, the assets of the Retirement Plan were transferred to the Trust and LMGAMI was appointed as the investment manager of the Retirement Plan and any other employee benefit plan maintained for the benefit of the employees of Liberty Mutual and its affiliated entities that is subject to the fiduciary responsibility provisions of Part IV of Title I of ERISA (collectively with the Retirement Plan, the Liberty Mutual Plans).

4. The Department notes that the rules set forth in section 406 of ERISA proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[6] Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

5. Liberty Mutual states that PTE 96–23 provides broad exemptive relief for transactions entered into on behalf of a plan at the direction of an ''in-house asset manager'' (*i.e.,* an INHAM), an investment manager that manages assets for related employee benefit plans, upon meeting certain requirements. The principal part of the exemption is relief for transactions between an INHAM and persons who are parties in interest to the plan solely by reason of providing services to the plan or by reason of a relationship to such a service provider; and certain ''co-joint venturers'' with the plan's sponsoring employer. Among other things, in order to rely on the relief, the INHAM must adopt written policies and procedures designed to ensure compliance with the conditions of the exemption, and a qualified, independent auditor must annually conduct an audit of compliance with the policies and procedures and certain conditions of the exemption.[7] Moreover, Liberty Mutual states that relief under PTE 96–23 is only available to entities that register as RIAs. Specifically, Part IV(a)(2) of PTE 96–23 defines an INHAM, in relevant part, as ''an investment adviser registered under the [Advisers Act.]'' The requirement that an INHAM be registered under the Advisers Act as an RIA was included, in addition to others, to ''help to ensure that the INHAM is an entity that has developed an appropriate level of expertise in financial and business matters.'' [8] Liberty Mutual's representations regarding its experience and expertise are described in paragraph 27 below.

Decision To Withdraw RIA Status

6. According to Liberty Mutual, LMGAMI determined that maintaining its RIA status was more burdensome than originally anticipated and would not further Liberty Mutual's business strategy. The Applicant states that, in its insurance business, Liberty Mutual invests significant amounts of capital in long-term investment vehicles (such as private capital transactions). The Applicant states that LMGAMI's

[5] According to the Retirement Plan's Investment Policy Statement, effective October 24, 2014, a small portion of the Retirement Plan's legacy assets remain in the group annuity contract issued by Liberty Life Assurance Company of Boston. The Retirement Plan intends to transition all of its assets from the group annuity contract to the Trust.

[6] The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA, which do not necessitate a transaction between a plan and a party in interest. These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[7] See 67 FR 18257, 18258 (April 1, 2011).

[8] See 60 FR 15600 (March 24, 1995).

registration as an RIA was required to create strategic partnerships with a small number of large institutional investors with like objectives. By doing so, Liberty Mutual could enhance its ability to invest in such assets and provide additional diversification through such investments.

7. Liberty Mutual represents that: Legislative changes such as those enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act; [9] regulatory changes that substantially discounted the value of long-term illiquid investments for purposes of satisfying the capital requirements applicable to insurance companies and other financial services companies; and adverse changes in the capital treatment of such investments by credit rating agencies; combined to substantially diminish the appetite for such investments, among large institutions, and essentially derailed this business objective. As a result, the Applicant states, Liberty Mutual had no unaffiliated third party assets under management, and had no intention to seek to manage any such assets.

8. Without any third-party assets under its management, the Applicant states that the rules and regulations pertaining to investments made by RIAs are inapplicable to Liberty Mutual's business model. Liberty Mutual represents that a significant part of its business is the investment of assets that belong to the insurance company. Thus, the efficient investment of substantial sums of its assets is critical to its ongoing operations. As a regulated insurance company, it must maintain certain statutory reserves and meet minimum standards of risk-based capital. Liberty Mutual is subject to regulation by state authorities that monitor its ongoing solvency and establish certain rules and procedures that must be followed with respect to the investments of its assets.

9. Similarly, Liberty Mutual states the Advisers Act contains other rules and prohibitions intended to protect a third party investor from the adviser over-promoting its recommendations. The Applicant states that while such restrictions may be appropriate for protecting the interests of third-party investors, these conditions added substantial burdens for an entity managing billions of dollars of assets for an integrated group of affiliated financial services companies and did not provide any useful protection when LMGAMI was communicating with the sophisticated and financially astute officers of Liberty Mutual and its other affiliates.[10]

10. Liberty Mutual states that the Advisers Act imposes the safeguards and limitations contained therein because many of a given RIA's clients are individuals without significant sophistication and/or bargaining power and without any other statutory regime to protect them against any potential adviser misconduct. However, the only ''client'' money under Liberty Mutual's management is that of its own Retirement Plan. As such, the Applicant states that Liberty Mutual and LMGAMI are already legally compelled as fiduciaries to act in the Retirement Plan's best interests under provisions of section 404 of ERISA. Liberty Mutual and LMGAMI are expressly precluded from acting to the detriment of the Retirement Plan, and any action undertaken to benefit itself or any of its affiliates would be precluded by the provisions of section 406 of ERISA (among others). Moreover, the Applicant states that Liberty Mutual has an economic interest in the performance of the Retirement Plan's assets, as ERISA and the Code make the company responsible for any shortfalls in the Retirement Plan's funding. Thus, Liberty Mutual states that it and the Retirement Plan have a commonality of interests when it comes to the success of the Retirement Plan's investments that is not typically present between an RIA and its client.[11]

11. Thus, Liberty Mutual represents that while LMGAMI's status as an RIA afforded the benefits available under PTE 96–23 and the ability to manage the Retirement Plan's assets in a trusteed arrangement, the burdens for the business and its operations made continuing such status unacceptable. Liberty Mutual represents that LMGAMI filed a Form ADV–W with the Securities and Exchange Commission on October 27, 2014, to effect the withdrawal of its RIA status. As such, Liberty Mutual states, LMGAMI no longer qualifies to serve as an INHAM pursuant to PTE 96–23.

12. Upon LMGAMI discontinuing its RIA registration, Liberty Mutual, as an investment manager under section 3(38) of ERISA, assumed management responsibilities over the assets of the Retirement Plan under an investment management agreement with an effective date of October 27, 2014 (the IMA). LMGAMI continues to provide investment services to the Retirement Plan as a sub-adviser to Liberty Mutual, at no cost, pursuant to a sub-adviser agreement between Liberty Mutual and LMGAMI, effective October 27, 2014 (the SAA). Liberty Mutual submitted the IMA and the SAA to the Massachusetts Department of Insurance (Department of Insurance) on October 10, 2014, and the Department of Insurance approved the IMA and SAA on October 24, 2014.

Exemptive Relief Requested

13. Liberty Mutual requests an individual exemption from sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA with regard to the management by Liberty Mutual and its asset manager affiliates (collectively, the Liberty Mutual Asset Managers) of the plan assets of the Liberty Mutual Plans. In this regard, Liberty Mutual requests exemptive relief for certain party-in-interest transactions with respect to which the Liberty Mutual Asset Managers would engage in on behalf of a Liberty Mutual Plan if PTE 96–23 were available. Such transactions include arm's-length sales or exchanges of property, the provision of necessary services, and various commercially appropriate extensions of credit. According to Liberty Mutual, the requested relief includes transactions for which no other statutory or administrative exemptions are available, including, hedges of currency risks associated with investments denominated in foreign currencies, as well as transactions with regard to assets for which there is not an established market, such as real estate transactions, secondary investments in private equity vehicles, and certain private debt offerings of reliable borrowers.

14. Liberty Mutual states that sections 3(14)(A) and 3(14)(B) of ERISA define the term ''party in interest'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Numerous entities currently provide, and will in the future continue to provide services to the Liberty Mutual Plans, including as brokers, custodians, investment advisers, consultants, actuaries or trustees, and therefore constitute parties in interest with respect to the Liberty Mutual Plans. Furthermore, section 3(14)(I) of ERISA defines the term ''party in interest'' to include certain entities (co-joint venturers) owning at least 10% of a joint venture in which an employer of employees participating in the plan (or its parent) has at least a 50% interest.

[9] Public Law 111–203, 124 Stat. 1376 (2010).

[10] The Department notes that it is not expressing a view whether certain rules under the Advisers Act may be unduly burdensome or inappropriate in protecting Liberty Mutual's interests.

[11] The Department notes that this exemption does not provide relief for LMGAMI or any other Liberty Mutual entity to receive a fee in connection with any transaction described herein.

15. Liberty Mutual represents that section 406(a)(1)(A) of ERISA prohibits the sale or exchange, or leasing, of property between a plan and a party in interest. Liberty Mutual states that, to the extent that any service provider, such as a broker that provides brokerage services to a Liberty Mutual Plan or any co-joint venturer, sells any security (including a debt instrument) or other property to, or purchases a security or other property from, a Liberty Mutual Plan as a principal, a prohibited transaction would occur under section 406(a)(1)(A) of ERISA.

16. Liberty Mutual represents that section 406(a)(1)(B) of ERISA prohibits the lending of money or other extension of credit between a plan and a party in interest. Thus, Liberty Mutual states, to the extent that any service provider to a Liberty Mutual Plan or a co-joint venturer of Liberty Mutual, such as a bank, holds a mortgage on real property that a Liberty Mutual Plan owns, or a broker extends credit to a Liberty Mutual Plan to effect a securities transaction, or a Liberty Mutual Plan purchases a debt obligation of any person that is also a service provider to such Liberty Mutual Plan or a co-joint venture of Liberty Mutual, a prohibited transaction would occur under section 406(a)(1)(B) of ERISA.

17. Liberty Mutual further states that section 406(a)(1)(D) of ERISA prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if such fiduciary knows or should know that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. As such, Liberty Mutual states, to the extent that any Liberty Mutual Asset Manager acting in a fiduciary capacity on behalf of any Liberty Mutual Plan were to allow such Liberty Mutual Plan to engage in a transaction with a service provider, such as the manager of an investment fund that is treated as plan assets under ERISA; or a co-joint venturer of Liberty Mutual; such transaction would involve the use or transfer to by such entity of the assets of the Liberty Mutual Plan, in violation of section 406(a)(1)(D) of ERISA.

Statutory Findings—In The Interest of Liberty Mutual Plans

18. Liberty Mutual represents that the proposed exemption, if granted, would facilitate an efficient execution of the Liberty Mutual Plans' investment strategy, by permitting the Liberty Mutual Plans to engage in a series of commercially common, beneficial transactions with counterparties that may constitute ''parties in interest'' because of their status as service providers under section 3(14)(B) of ERISA.

19. Liberty Mutual represents that, while section 408(b)(17) of ERISA generally permits the sale or exchange of property or the extension of credit between a plan and a person that is a service provider to such plan, there are certain transactions beneficial to the Retirement Plan, such as hedges of currency risks associated with investments denominated in foreign currencies, which cannot be effected in reliance on the available statutory exemptions. Liberty Mutual states that the Retirement Plan incorporates into its investment strategy investments covering a wide array of investment classes, including alternative investments. Liberty Mutual states that sophisticated counterparties to the Retirement Plan usually insist on representations and warranties that no prohibited transaction will occur as a result of a transaction.

20. Furthermore, Liberty Mutual represents that, for common commercial transactions involving assets for which there is not an established market, such as real estate transactions, secondary investments in private equity vehicles, and certain private debt offerings of reliable borrowers, the requisite data to assure compliance with the statutory exemptions, such as demonstrating ''adequate consideration'' with regard to transactions relying upon section 408(b)(17) of ERISA, may not be available or timely available. Without the availability of such market references, the availability of the statutory exemption under section 408(b)(l7) of ERISA is dependent on the judgment of the fiduciary acting on behalf of the investing plan. The Applicant represents that counterparties are sometimes unwilling to rely on a fiduciary's subjective determination of value, which often leads to additional time and expense (such as may arise from having to obtain additional independent appraisals of the value of the underlying assets from independent valuation firms at the expense of the plan) to complete an investment. The Applicant represents that counterparties may not wish to delay the consummation of the transaction in order to assure that such a valuation can be obtained, particularly if other investors are available that can rely on a statutory exemption such as PTE 96–23. Liberty Mutual states that, therefore, the requested exemption would facilitate the Retirement Plan's ability to properly diversify its investments and make it more competitive in procuring such assets for its own account.

21. Liberty Mutual represents further that it requires relief for transactions between the plan and co-joint venturers, or entities that own at least 10% of a joint venture in which an employer of employees participating in the plan (or its parent) has at least a 50% interest and are described in section 3(14)(I) of ERISA. Liberty Mutual represents that its investment arm invests in assets through comingled investment vehicles as a part of its business model. For instance, the investment arm of Liberty mutual may invest in real estate with a joint venture partner and the joint venturer would own 10% and manage the real estate and Liberty Mutual would own the remaining interest in the real estate investment through its general account. Liberty Mutual states that it engages in such transactions with other investment vehicles also where they invest with a partnership or joint venture and Liberty owns least 50%. According to the Applicant, it is administratively burdensome to monitor every joint venture in which an employer participates in order to ensure that a plan maintained by such employer does not engage in commercially common, low-risk transactions with such entities.

Liberty Mutual represents that, given the magnitude of the assets that it manages in the ordinary course of its business, Liberty Mutual makes numerous investments, including significant investments in real estate, private equity and other types of alternative investments. Liberty Mutual represents that, in the context of real estate investments, it is common for the developer of the property to hold a substantial minority interest in the investment, while the investor that finances the development of the property holds the majority interest. However, the developer, which has the expertise to develop the property effectively, would retain operational control over the management and development of the property. On the other hand, Liberty Mutual represents, in private equity investments, Liberty Mutual will often take a direct substantial ownership position or be a significant investor in an investment fund established to make investments in portfolio companies. To this end, it would not be uncommon for Liberty Mutual to have ownership of more than 10% and less than 50% in such private equity investments. Operational control over the portfolio companies will usually be vested in the sponsor of the fund or the lead investor in a direct investment. The Applicant represents that other kinds of alternative

investments are frequently structured in a similar fashion, where Liberty Mutual is a significant minority holder, but not a controlling investor and does not have any operational control over the investment or the investment vehicle managing the assets. As such, in the ordinary course of business, Liberty Mutual owns substantial passive interests in a very large number of investments where other partners in the investment, who have unique expertise in the particular investment category, have the control over the management of the underlying investments.

Liberty Mutual represents that, compared to other employers, which generally engage in joint ventures only as part of their core business, Liberty Mutual most often engages in such relationships in its capacity as an investor. To this end, the Applicant represents that Liberty Mutual is a passive joint venture partner with a multitude of entities that ordinarily operate the applicable ventures independently from Liberty Mutual. If any Liberty Mutual Plan engaged in any transaction with such an entity, the counterparty representing the venture will conduct itself like any other independent, third party engaging in a commercial transaction. The Applicant represents that, to the extent that Liberty Mutual directs any investment on behalf of any Liberty Mutual Plan, it will be subject to ERISA's fiduciary responsibility provisions, both as a matter of law and as a condition of the exemption. Moreover, the Liberty Mutual Plan investors will often be investing side by side with the general account in those investments that are appropriate for the Plans. Thus, with regard to any such investment, the interests of Liberty Mutual and any Liberty Mutual Plan investor would be aligned.

22. Liberty Mutual states that it has not charged, and will not charge in the future, the Retirement Plan fees for the investment management services that it provides, and does not seek reimbursement for the expenses it incurs in providing the services of its employees to manage the assets of the Retirement Plan. Liberty Mutual represents that, were the Liberty Mutual Plans to retain the services of similarly qualified third party investment managers, the operating expenses of the Liberty Mutual Plans would increase significantly. Liberty Mutual states that, absent exemptive relief, even if only alternative assets were turned over to third-party managers, the incremental annual cost to the Liberty Mutual Plans would be approximately $15 million.

23. Liberty Mutual represents that, aside from the increased cost in fees, retaining third party managers is not the optimal approach for the investment of the Retirement Plan's assets. In this regard, Liberty Mutual states that having control over the Retirement Plan's assets provides it with the ability to increase investment returns in a manner that could not be achieved if multiple unaffiliated managers were retained to invest the Retirement Plan's assets.

Liberty Mutual further represents that having control over the entire portfolio allows for efficiencies that can improve the ability to maximize returns and control investment risks by affording greater integration in the asset/liability management process. For example, with respect to managing interest rate risks, having multiple individual asset managers hedge their interest rate risk to a target (relative to liabilities) can result in inefficient trading. Some managers will be buying, while others will be selling. The Applicant represents that the net impact of having separate managers each manage the risk associated with the portion of the portfolio under their management can result in unnecessary transaction costs for the Liberty Mutual Plan.

The Applicant states that having current oversight of the entire asset base allows for more efficient risk control. Setting investment criteria relative to benchmark levels is not a static process, as index weights adjust on a daily basis. The Applicant represents that, if the Liberty Mutual Plan wants to set an absolute aggregate (across stocks and bonds) energy exposure to 10% of assets under management, the various investment management agreements or guidelines with multiple managers would need to be adjusted more frequently than is practical.

24. The Applicant states that as a matter of policy, certain counterparties will not engage in hedging transactions with plans in reliance on the service provider exemption under section 408(b)(l7) of ERISA. Others may do so only with regard to currencies that are widely traded and do not fluctuate significantly in value. Thus, according to Liberty Mutual, there have been and may in the future be occasions where it would be advantageous (and a normal precaution) for the Retirement Plan to put in place a currency hedge, or perhaps an interest rate hedge, as a secondary protection for an appropriate and attractive primary investment opportunity that cannot be effected without the benefit of the requested exemption. In such circumstances, the fiduciaries on behalf of the Retirement Plan would have to determine whether to forego the perceived beneficial investment opportunity or make the investment and assume the exposure to the risk that could otherwise be hedged.

Liberty Mutual represents that counterparties are reluctant, or may refuse, to engage in transactions with plan investors relying on other potentially available exemptions that are dependent on fact specific considerations that can vary from transaction to transaction, such as is the case with regard to the relief provided under the ''service provider'' exemption set forth in section 408(b)(17) of ERISA.

25. Liberty Mutual states that, if the exemption is granted, the continued absence of RIA status will not affect in any way the manner in which Liberty Mutual or LMGAMI manages the assets of Liberty Mutual Plans. Liberty Mutual represents that the fact that neither Liberty Mutual nor LMGAMI is an RIA does not preclude the Liberty Mutual Plans from any services or any transactions that Liberty Mutual or LMGAMI offers.

26. Liberty Mutual represents that it has over 80 years of experience managing insurance company assets and it conducts extensive compliance training of investment personnel, including ERISA fiduciary training. Liberty Mutual and LMGAMI collectively employ approximately 85 investment professionals dedicated to the investment of the assets under Liberty Mutual's management and control, with investment teams dedicated to distinct asset classes. Liberty Mutual states that its Chief Investment Officer has over 30 years of experience in the investment industry. Furthermore, Liberty Mutual states an investment compliance team monitors portfolio compliance in real time employing sophisticated software.

Statutory Findings—Protective of the Rights of Participants

27. Liberty Mutual represents that state insurance laws regulate Liberty Mutual's financial condition and reporting requirements, the diversification of Liberty Mutual's investment portfolio, and types of investments that Liberty Mutual can undertake. Liberty Mutual states that it files audited annual financial statements and unaudited quarterly financial statements with the insurance authorities in all 50 states, and is subject to robust, risk-focused inspections by state insurance regulators every three to five years. Liberty Mutual states that these inspections include extensive audits of its control systems and reviews of its operating procedures, investments and other transactions.

28. Furthermore, the exemption will be subject to a suite of robust, protective conditions. The terms of transactions entered into in reliance of this exemption will be negotiated on behalf of the Liberty Mutual Plan by, or under the authority and general direction of, the Liberty Mutual Asset Manager, and either the Liberty Mutual Asset Manager or, so long as the Liberty Mutual Asset Manager retains full fiduciary responsibility with respect to the transaction, a sub-adviser acting in accordance with written guidelines established and administered by the Liberty Mutual Asset Manager, makes the decision on behalf of the plan to enter into the transaction. Furthermore, the party in interest engaging in the transaction with the Liberty Mutual Plan may not have discretionary authority or control with respect to the investment of the Liberty Mutual Plan assets involved in the transaction and may not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

29. Liberty Mutual represents that, notwithstanding the withdrawal of its registration as an RIA under the Advisers Act, the exemption requires the Liberty Mutual Asset Manager to adopt, maintain, and follow policies and procedures (Policies) designed to ensure compliance with the conditions of this exemption, reinforce the Liberty Mutual Asset Manager's fiduciary duties, ensuring that the Liberty Mutual Asset Manager and its personnel operate within an impartial conduct standard in accordance with a duty of loyalty and prudence pursuant to section 404 of the Act with respect to the Liberty Mutual Plan when condu0cting business with, or on behalf of, the applicable Liberty Mutual Plan, and avoid conflicts of interest or risk exposure, including an investment allocation policy and best execution policy.

30. Liberty Mutual represents that its control systems are tested three times per year, with regular internal and external audits. Nevertheless, the Department views a robust independent audit requirement as an essential condition for exemptive relief hereunder. Therefore, the exemption requires that the Liberty Mutual Asset Manager must submit to an audit conducted annually by an independent auditor. The audit must cover a consecutive twelve-month period beginning on the effective date of the exemption.

31. The auditor must issue a written report (the Audit Report) to Liberty Mutual and the Liberty Mutual Asset Manager with respect to each audit that describes the procedures performed by the auditor during the course of its examination, to be completed within six months following the end of the 12-month period to which the audit relates. The Audit Report must include, among other things, the auditor's specific determinations regarding the compliance with the conditions for the exemption; the adequacy of, and compliance with, the Policies; the auditor's recommendations (if any) with respect to strengthening such Policies; and any instances of noncompliance with the conditions for the exemption or the Policies.

32. The Liberty Mutual Asset Manager will make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan.

33. The Liberty Mutual Asset Managers will prepare and make available to all participants of, and beneficiaries entitled to receive benefits under, the Liberty Mutual Plans (the Eligible Recipients) a plain English, narrative brochure (the Brochure) that contains information comparable to that required by Part 2A of Form ADV filed under the Investment Advisers Act of 1940,[12] modified such that the disclosure is relevant to Eligible Recipients with respect to the management of the applicable Liberty Mutual Plan. Liberty Mutual must also provide an annual update to the Brochure (the Updated Brochure), containing or accompanied by a summary of material changes.

34. As an additional condition of the exemption, each Liberty Mutual Asset Manager must establish an internal compliance program that addresses the Liberty Mutual Asset Manager's performance of its fiduciary and substantive obligations under ERISA (the Compliance Program). Each Liberty Mutual Asset Manager must designate a chief compliance officer (the CCO), who must be knowledgeable about ERISA and have the authority to develop and enforce appropriate compliance policies and procedures for the Liberty Mutual Asset Manager. Also, as part of the Compliance Program, each Liberty Mutual Asset Manager must adopt and enforce a written code of ethics that, among other things, will reflect the Liberty Mutual Asset Manager's fiduciary duties to the Liberty Mutual Plans.

35. Finally, the Liberty Mutual Asset Manager must act in the Best Interest of the Liberty Mutual Plan at the time of the transaction. Furthermore, the Liberty Mutual Asset Manager's statements about material conflicts of interest and any other matters relevant to the Liberty Mutual Asset Manager's relationship with the Liberty Mutual Plan, must not be materially misleading at the time they are made.

Statutory Findings—Administratively Feasible

36. Liberty Mutual represents that the proposed exemption is administratively feasible. Liberty Mutual represents that it maintains substantial internal control systems regulating its financial reporting and related functions, including portfolio management, that are tested three times per year, with regular internal audits. Furthermore, as described above, the Liberty Mutual Asset Manager will be subject to robust annual audits to be conducted by an independent auditor. The Liberty Mutual Asset Manager must then make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan.

Summary

37. In summary, provided that the conditions described above are satisfied, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA.

Proposed Exemption Operative Language

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to a Liberty Mutual Plan (as defined in Section II(h)) and such Liberty Mutual Plan, provided that the Liberty Mutual Asset Manager

[12] The Department understands that Form ADV is the uniform form used by investment advisers to register with both the Securities and Exchange Commission (SEC) and state securities authorities. The form consists of two parts. Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. The brochure is the primary disclosure document that investment advisers provide to their clients.

(as defined in Section II(a)) has discretionary authority or control with respect to the assets of the Liberty Mutual Plan involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the Liberty Mutual Plan by, or under the authority and general direction of, the Liberty Mutual Asset Manager, and either the Liberty Mutual Asset Manager or, so long as the Liberty Mutual Asset Manager retains full fiduciary responsibility with respect to the transaction, a sub-adviser acting in accordance with written guidelines established and administered by the Liberty Mutual Asset Manager, makes the decision on behalf of the Plan to enter into the transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded); or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The transaction is not part of an arrangement, agreement, or understanding designed to violate or evade compliance with ERISA or the Code;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Liberty Mutual Asset Manager, the terms of the transaction are at least as favorable to the Liberty Mutual Plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the Liberty Mutual Plan:

(1) Is a party in interest with respect to the Liberty Mutual Plan (including a fiduciary); either

(A) Solely by reason of providing services to the Liberty Mutual Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA; or

(B) Solely by reason of being a 10-percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the Liberty Mutual Plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer; or

(C) By reason of both (A) and (B) only; and

(2) Does not have discretionary authority or control with respect to the investment of the Liberty Mutual Plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the Liberty Mutual Plan is neither the Liberty Mutual Asset Manager nor a person related to the Liberty Mutual Asset Manager (within the meaning of Section II(d));

(g) The Liberty Mutual Asset Manager adopts, maintains, and follows written policies and procedures (the Policies) that:

(1) Are designed to assure compliance with the conditions of the exemption and its fiduciary responsibilities and avoid any conflicts of interest or risk exposure, including an investment allocation policy and best execution policy, and ensure that the Liberty Mutual Asset Manager and its personnel operate within an impartial conduct standard in accordance with a duty of loyalty and prudence pursuant to section 404 of the Act with respect to the Liberty Mutual Plan when conducting business with, or on behalf of, the applicable Liberty Mutual Plan;

(2) Describe the objective requirements of the exemption, and describe the steps adopted by the Liberty Mutual Asset Manager to assure compliance with each of these requirements:

(A) The requirements of Section I of the exemption, including Section I(a) regarding the discretionary authority or control of the Liberty Mutual Asset Manager with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Liberty Mutual Plan to enter into the transaction;

(B) That any procedure for approval or veto of the transaction meets the requirements of Section I(a);

(C) For a transaction described in Section I:

(i) That the transaction is not entered into with any person who is excluded from relief under Section I(e)(1), Section I(e)(2), or Section I(f); and

(ii) That the transaction is not described in any of the class exemptions listed in Section I(b);

(3) Are reasonably designed to prevent the Liberty Mutual Asset Manager or its personnel from violating ERISA or other federal or state laws or regulations applicable with respect to the investment of the assets of the applicable Liberty Mutual Plan (Applicable Law);

(4) Cover, at a minimum, the following areas to the extent applicable to the Liberty Mutual Asset Manager:

(A) Portfolio management processes, including allocation of investment opportunities among any Liberty Mutual Plan and Liberty Mutual's proprietary investments, taking into account the investment objectives of the applicable Liberty Mutual Plan and any restrictions under Applicable Law;

(B) Trading practices, including procedures by which the Liberty Mutual Asset Manager satisfies its best execution obligation, and allocates aggregated trades among all Liberty Mutual Plans and/or Liberty Mutual proprietary accounts for which it provides investment management services;

(C) Personal trading activities of any employee of Liberty Mutual and its subsidiaries who has personal involvement and responsibility for investment decisions regarding the investment of the assets of the applicable Liberty Mutual Plan (an LM Advisory Employee);

(D) The Liberty Mutual Asset Manager's policies regulating conflicts of interest;

(E) The accuracy of disclosures, including account statements, made to the trustee(s) or fiduciaries of any Liberty Mutual Plan or to any regulators;

(F) Safeguarding of Liberty Mutual Plan assets from conversion or inappropriate use by any LM Advisory Employee;

(G) The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;

(H) Processes to value holdings of any Liberty Mutual Plan, to the extent, if any, that such valuation is within the control of the Liberty Mutual Asset Manager;

(I) Safeguards for the privacy protection of records and information pertaining to each Liberty Mutual Plan; and

(J) Business continuity plans; and

(5) Any violations of or failure to comply with items (1) through (4) above are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the Chief

Compliance Officer (as described below in Section I(j)) of the Liberty Mutual Asset Manager, and the independent auditor described in Section I(h) below, and a fiduciary of the relevant Liberty Mutual Plan; the Liberty Mutual Asset Manager will not be treated as having failed to adopt, maintain, or follow the Policies, provided that it corrects any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this item (5);

(h)(1) The Liberty Mutual Asset Manager submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has the appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and applicable securities laws to evaluate the adequacy of, and compliance with, the Policies described herein, and compliance with the requirements of the exemption, and so represents in writing. Upon the Department's request, the auditor must demonstrate its qualifications as required by this paragraph and its independence from Liberty Mutual. The audit must be incorporated into the Policies and cover a consecutive twelve-month period beginning on the effective date of the exemption. Each annual audit must be completed within six months following the end of the twelve-month period to which the audit relates;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, the Liberty Mutual Asset Manager and, if applicable, Liberty Mutual, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether the Liberty Mutual Asset Manager has complied with the conditions for the exemption, including the requirement to adopt, maintain, and follow Policies in Section I(g);

(4) The auditor's engagement shall specifically require the auditor to test the Liberty Mutual Asset Manager's operational compliance with the exemption, including the Policies in Section I(g). In this regard, the auditor must test a sample of the Liberty Mutual Asset Manager's transactions involving the Liberty Mutual Plan sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Liberty Mutual and the Liberty Mutual Asset Manager that describes the procedures performed by the auditor during the course of its examination, to be completed within six months following the end of the twelve-month period to which the audit relates. The Audit Report shall include the auditor's specific determinations regarding the compliance with the conditions for the exemption; the adequacy of, and compliance with, the Policies; the auditor's recommendations (if any) with respect to strengthening such Policies; and any instances of noncompliance with the conditions for the exemption or the Policies described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and the auditor's recommendations (if any) with respect to strengthening the Policies shall be promptly addressed by the Liberty Mutual Asset Manager, and any actions taken by the Liberty Mutual Asset Manager to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the Liberty Mutual Asset Manager has adopted, maintained, and followed sufficient Policies shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Liberty Mutual Asset Manager has complied with the requirements under this subsection must be based on evidence that demonstrates the Liberty Mutual Asset Manager has actually adopted, maintained, and followed the Policies required by this exemption;

(6) The auditor shall notify the Liberty Mutual Asset Manager and Liberty Mutual of any instances of noncompliance with the conditions for the exemption or the Policies identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or the Chief Compliance Officer (described in Section I(j)) of the Liberty Mutual Asset Manager certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) A senior executive officer with a direct reporting line to the highest ranking compliance officer of Liberty Mutual reviews the Audit Report and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report; and

(9) The Liberty Mutual Asset Manager makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan;

(i) The Liberty Mutual Asset Manager will prepare and make available to all participants of, and beneficiaries entitled to receive benefits under, the Liberty Mutual Plans (the Eligible Recipients) a plain English, narrative brochure (the Brochure) that contains all substantive information, comparable to that required by Part 2A of Form ADV filed under the Investment Advisers Act of 1940, but modified such that the disclosure is relevant to Eligible Recipients with respect to the management of the applicable Liberty Mutual Plan;

(1) The Brochure shall include, among other things:

(A) The Liberty Mutual Asset Manager's investment strategy with respect to the applicable Liberty Mutual Plan;

(B) The Liberty Mutual Asset Manager's policies regarding conflicts of interest;

(C) Any disciplinary information related to employees of the Liberty Mutual Asset Manager; and

(D) A prominent statement that the Eligible Recipients may request a copy of the Policies, with instructions on how to make such request and receive such copy;

(2) The Liberty Mutual Asset Manager must make the Brochure available to the Eligible Recipients: (1) with respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager, within 90 days of the effective date of this exemption; and (2) with respect to any other Liberty Mutual Plan for which any Liberty Mutual Asset Manager thereafter becomes an investment manager, within ten (10) business days of the date that the applicable Investment Management Agreement or Sub-Adviser Agreement with a Liberty Mutual Plan becomes effective;

(3) Liberty Mutual annually updates such brochure (the Updated Brochure), containing or accompanied by a

summary of material changes. Each Updated Brochure that is made available following the completion of the first audit required with respect to any Liberty Mutual Asset Manager in accordance with this exemption must include a prominently displayed statement indicating that the Liberty Mutual Asset Manager has completed the required audit, and must also provide clear instructions for obtaining a copy of the audit;

(4) The Liberty Mutual Asset Manager will be deemed to have met the requirements pertaining to the provision of the Brochure and the Updated Brochure if it makes such documents available to the Eligible Recipients through a prominently displayed link on a Web site (the Plan Benefits Web site) where it makes available information to the Eligible Recipients about their benefits and rights under the applicable Liberty Mutual Plan (Plan Information), and contact information for an appropriate representative of Liberty Mutual to direct inquiries from the Eligible Recipients, which is readily available to such Eligible Recipients. Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits Web site, and the link to the Brochure and Updated Brochure at least once annually, to all Eligible Recipients;

(5) For any such Eligible Recipient to whom Liberty Mutual makes Plan Information available by hard copy or other means (Supplemental Delivery), the Brochure and the Updated Brochure must be provided to such Eligible Recipient at the same time and by the same means that Plan Information is provided;

(6) The Liberty Mutual Asset Manager will also provide supplements to the Brochure (each, a Brochure Supplement) that contain information about any LM Advisory Employee, including the LM Advisory Employee's educational background, business experience, other business activities, and disciplinary history;

(7) Each Brochure Supplement must be made available in the same manner as the Brochure, and must be posted to the Plan Benefits Web site, not later than 90 days following the date that any such LM Advisory Employee begins to provide advisory services to that Liberty Mutual Plan. Such Brochure Supplement must be included with the next Updated Brochure included in the material provided to any Eligible Recipient receiving such Updated Brochure by Supplemental Delivery;

(8) With respect to any individuals who become Eligible Recipients with respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager (the New Eligible Recipients) after the delivery of the Brochure to the Eligible Recipients with respect to the Liberty Mutual Plan, the Liberty Mutual Asset Manager will provide a copy of the Brochure as well as the most recent Updated Brochure, if applicable, and any Brochure Supplements related to LM Advisory Employees employed by the Liberty Mutual Asset Manager at the time the New Eligible Recipients became Eligible Recipients, within 90 days of the New Eligible Recipients becoming Eligible Recipients with respect to the Liberty Mutual Plan. The Liberty Mutual Asset Manager will be deemed to have met the disclosure requirements pertaining to the New Eligible Recipients if it makes the applicable documents available to the New Eligible Recipients through a prominently displayed link on the Plan Benefits Web site described in section I(i)(4) of this exemption. Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits Web site, and the link to the Brochure, Updated Brochure, and Brochure Supplements to all New Eligible Recipients. For any such New Eligible Recipient to whom Liberty Mutual makes Plan Information available by Supplemental Delivery, the Brochure and the Updated Brochure must be provided to such New Eligible Recipient at the same time and by the same means that Plan Information is provided;

(j) Each Liberty Mutual Asset Manager must establish an internal compliance program that addresses the Liberty Mutual Asset Manager's performance of its fiduciary and substantive obligations under ERISA (the Compliance Program);

(1) Each Liberty Mutual Asset Manager must designate a Chief Compliance Officer (the CCO), who must be knowledgeable about ERISA and have the authority to develop and enforce appropriate compliance policies and procedures for the Liberty Mutual Asset Manager;

(2) As part of the Compliance Program, each Liberty Mutual Asset Manager must adopt and enforce a written code of ethics that, among other things, will reflect the Liberty Mutual Asset Manager's fiduciary duties to the Liberty Mutual Plans. At a minimum, the Liberty Mutual Asset Manager's code of ethics must:

(A) Set forth a minimum standard of conduct for all LM Advisory Employees and any other employees of the Liberty Mutual Asset Manager whose responsibilities include assisting the LM Advisory Employees in managing the investments of any Liberty Mutual Plan (the LM Facilitating Employees);

(B) Require LM Advisory Employees and LM Facilitating Employees to comply with Applicable Law in fulfilling their investment management duties to the Liberty Mutual Plans;

(C) Require each LM Advisory Employee to report his or her securities holdings at the later of the time that the person becomes an LM Advisory Employee or within 90 days after this exemption becomes effective and at least once annually thereafter and to make a report at least once quarterly of all personal securities transactions in reportable securities to the Liberty Mutual Asset Manager's CCO or other designated person;

(D) Require the CCO or other designated persons to pre-approve investments by any LM Advisory Employee in IPOs or limited offerings;

(E) Require each LM Advisory Employee or LM Facilitating Employees to promptly report any violation of Applicable Law to the Liberty Mutual Asset Manager's CCO or other designated person;

(F) Require the Liberty Mutual Asset Manager to provide training on applicable law and to obtain a written acknowledgment from each LM Advisory Employee documenting his/her agreement to abide by the code of ethics, the Policies, and applicable law; and

(G) Require the Liberty Mutual Asset Manager to keep records of any violations of applicable law and of any actions taken against the violators;

(k) The Liberty Mutual Asset Manager must act in the Best Interest of the Liberty Mutual Plan at the time of the transaction. For purposes of this paragraph, a Liberty Mutual Asset Manager acts in the ''Best Interest'' of the Liberty Mutual Plan when the Liberty Mutual Asset Manager acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Liberty Mutual Plan, without regard to the financial or other interests of the Liberty Mutual Asset Manager, any affiliate or other party;

(l) The Liberty Mutual Asset Manager's statements about material conflicts of interest and any other matters relevant to the Liberty Mutual Asset Manager's relationship with the Liberty Mutual Plan, are not materially misleading at the time they are made. For purposes of this paragraph, a ''material conflict of interest'' exists when a Liberty Mutual Asset Manager has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a Liberty Mutual Asset Manager; and

(m) The Liberty Mutual Asset Manager will not charge any asset management fees or receive any fee in connection with transactions covered by this exemption.

Section II. Definitions

(a) The term ''Liberty Mutual Asset Manager'' means Liberty Mutual or any organization that is either a direct or indirect 80 percent or more owned subsidiary of Liberty Mutual, or a direct or indirect 80 percent more owned subsidiary of a parent organization of Liberty Mutual, provided that such Liberty Mutual Asset Manager:

(1) Is an insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves) in excess of $1,000,000;

(2) Is subject to supervision and examination by a State authority having supervision over insurance companies and is subject to periodic audits by applicable State insurance regulators in accordance with the requirements of applicable state law, which, under current law, would be no less than once every five years;

(3) Has any arrangements between it and any Liberty Mutual Plan reviewed by the applicable State insurance regulators, including any investment management agreements (or revisions thereto) with the Liberty Mutual Plan and sub-advisor agreements with any other Liberty Mutual Asset Managers, the results of which will be made available without limitation to the independent auditor conducting the audit required under Section I(i);

(4) As of the last day of its most recent fiscal year, has under its management and control total assets in excess of $1 billion; and

(5) Together with its affiliates, maintains Liberty Mutual Plans holding aggregate assets of at least $500 million as of the last day of each Liberty Mutual Plan's reporting year;

(b) For purposes of Sections II(a) and II(h), an ''affiliate'' of a Liberty Mutual Asset Manager means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the Liberty Mutual Asset Manager is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the Liberty Mutual Asset Manager is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the Code or the rules thereunder;

(c) The term ''party in interest'' means a person described in section 3(14) of ERISA and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code;

(d) A Liberty Mutual Asset Manager is ''related'' to a party in interest for purposes of Section I(f) of this exemption, if, as of the last day of its most recent calendar quarter: (i) The Liberty Mutual Asset Manager (or a person controlling, or controlled by, the Liberty Mutual Asset Manager) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a 10 percent or more interest in the Liberty Mutual Asset Manager.

For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(e) will be deemed satisfied if the transaction was entered into between a Liberty Mutual Plan and a person who was not then a party in interest;

(f) The term ''LMGAMI'' means Liberty Mutual Group Asset Management Inc., a separate investment management subsidiary of Liberty Mutual;

(g) The term ''Liberty Mutual'' means Liberty Mutual Insurance Company; and

(h) The term ''Liberty Mutual Plan'' means the Liberty Mutual Retirement Benefit Plan and any other employee benefit plan subject to the fiduciary responsibility provisions of Part IV of Title I of ERISA maintained by Liberty Mutual or an affiliate of Liberty Mutual, and covering the employees of such entities.

Effective Date: The proposed exemption, if granted, will be effective as of the date that a final notice of granted exemption is published in the **Federal Register**.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact

information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RICap), and Their Affiliates (Collectively, Russell Investments or the Applicants) Located in Seattle, WA

[Application No. D–11916]

Proposed Exemption

The Department is considering granting an exemption under the authority of 29 U.S.C. 1108 (section 408(a) of the Act) and 26 U.S.C. (section 4975(c)(2) of the Code), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department. If the exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,[13] shall not apply, effective June 1, 2016, to:

(a) The receipt of a fee by Russell Investments, from an open-end investment company or open-end investment companies (Affiliated Fund(s)), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, and where Russell Investments: (1) Provides investment advisory services, or similar services to any such Affiliated Fund; and (2) provides to any such Affiliated Fund other services (Secondary Service(s)); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell Investments from: (1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell Investments to any such Affiliated Fund; and (2) an Affiliated Fund for the provision of Secondary Services by Russell Investments to any such Affiliated Fund.

Summary of Facts and Representations[14]

Background

1. On October 6, 2015, the Department granted Prohibited Transaction Exemption 2015–17 (PTE 2015–17) to Frank Russell Company and Affiliates (collectively, FRC). PTE 2015–17 provides conditional relief to FRC for the receipt of a fee from an Affiliated Fund, in connection with a Client Plan's direct investment in shares of an Affiliated Fund, or a Client Plan's indirect investment in shares of an Affiliated Fund, through investment in a pooled investment vehicle (the Collective Fund), where FRC: (a) Serves as a fiduciary with respect to such Client Plan, and (b) provides to such Affiliated Fund, investment advisory services or similar services, and Secondary Services, if certain conditions are met.

PTE 2015–17 defines FRC as ''Frank Russell Company and any affiliate thereof,'' and ''affiliate'' as ''[a]ny person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.'' While PTE 2015–17 was nominally granted to ''Frank Russell Company and Affiliates,'' the primary intended beneficiaries of the relief provided were two entities operating as ''Russell Investments''—Russell Investment Management, LLC (RIM) and Russell Investments Capital, LLC (RICap), each of which qualified as an ''affiliate'' of FRC within the meaning of PTE 2015–17. However, as of June 1, 2016, RIM and RICap no longer were under the control of, or common control with, FRC and, thus, no longer are ''affiliates'' of FRC within the meaning of PTE 2015–17.

On June 1, 2016, London Stock Exchange Group PLC (LSEG), FRC's ultimate parent company, sold Russell Investments for $1.15 billion to certain holding companies ultimately owned by certain private equity funds sponsored by TA Associates Management, LP and Reverence Capital Partners LP (the Sale). Following the Sale, FRC continues to operate as a wholly-owned subsidiary of LSEG, whereas RIM and RICap continue to operate as ''Russell Investments.'' Because FRC is no longer affiliated with Russell Investments by reason of the Sale, the Applicants have requested a new exemption that would apply the relief provided under PTE 2015–17 to the recently sold entities comprising Russell Investments.

Russell Investments

2. Russell Investments is a global asset management firm providing investment management products and services to individuals and institutions in 47 different countries. As of June 30, 2016, Russell Investments had approximately $244 billion in assets under management. Among the companies currently comprising Russell Investments are RIM and RICap.

RIM is an investment adviser registered with the U.S. Securities and Exchange Commission. RIM provides investment advisers and broker/dealers with model strategies designed to optimize asset allocation strategies based on various investment principles, and may also provide marketing assistance and subject matter expertise to these investment advisers. RIM may also provide objective setting, asset allocation, fund and manager selection services directly to pension plans or other institutional clients. As of December 31, 2016, RIM had total assets under management of over $40.4 billion, all of which was discretionary.

RICap is also an investment adviser registered with the U.S. Securities and Exchange Commission. RICap provides general investment advisory services and acts as an adviser to separate account clients as well as several private, private equity and hedge funds offered to select institutional investors. RICap advises private investment funds which involve privately negotiated equity and equity-related investments. As of December 31, 2016, RICap had approximately $8.3 billion in assets under management, all of which was discretionary.

Investment Products and Services

3. The Applicants represent that, in the United States, certain affiliates of Russell Investments make investments in mutual funds and collective

[13] For purposes of this proposed exemption reference to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

[14] The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

investment funds available to Client Plans, and develop investment products and services for such Client Plans. The investment products include open-end investment companies registered under the Investment Company Act of 1940, as amended, for which RIM serves as an investment adviser or sub-adviser (*i.e.,* the Affiliated Funds). Russell Investments may also serve as dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Services, including brokerage services, to an Affiliated Fund.

The Applicants state that other investment products provided by Russell Investments include bank-maintained common or collective trust funds and other similar pooled funds including, potentially, insurance company pooled separate accounts (Collective Funds) managed by Russell Investments Trust Company, a RIM affiliate.

4. The Applicants represent that the services provided by Russell Investments may include various types of investment advisory and/or investment management services which may be rendered at the individual Plan level, the Collective Fund level, or the Affiliated Fund level. According to the Applicants, Plan investment advisory, investment management and similar services include money manager selection, cash management, individual security selection and trading strategies, as well as various asset allocation strategies involving asset class selection and rebalancing, including target date fund ''glidepath'' strategies. Such services include Russell Investments' Adaptive Retirement Accounts asset allocation service, under which RIM provides individualized asset allocation advice to defined contribution plan participants.

5. The Applicants also represent that a Russell Investments entity acting as a fiduciary may cause a Client Plan to invest directly in one or more Affiliated Funds. It is also possible, the Applicants state, that a Russell Investments entity acting as a fiduciary to plans participating in a Collective Fund may cause a Client Plan to invest indirectly in Affiliated Funds by directing the investment of a Collective Fund in which a Client Plan participates into one or more Affiliated Funds.

Prohibited Transactions

6. Section 3(14)(A) and (B) of the Act defines the term ''party in interest'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Section 3(21)(A) of the Act provides, in relevant part, that a person is a fiduciary with respect to a plan to the extent that the person: (i) Exercises any discretionary authority or control respecting management of the Plan or any authority or control respecting management or disposition of its assets, or (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Russell Investments may currently serve, and may in the future serve, as investment adviser, investment manager, trustee, or other fiduciary with respect to Client Plans. Accordingly, pursuant to section 3(21)(A)(i) and (ii) of the Act, Russell Investments may currently be, or may in the future be, a fiduciary with respect to Client Plans which engage in the proposed transactions. As a fiduciary, Russell Investments may currently be, or may in the future be a party in interest with respect to Client Plans which engage in the transactions described in Section I of this proposed exemption.

Section 406(a)(l)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if such fiduciary knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. Where Russell Investments, as investment adviser or manager to a Client Plan, invests plan assets, directly or indirectly, in shares of a collective fund or a mutual fund that is managed or advised by Russell Investments, the investment purchase transaction violates section 406(a)(1)(D) of the Act.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (a) Deal with the assets of a plan in his own interest or for his own account, (b) act, in his individual or in any other capacity in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (c) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Russell Investments, as investment manager or investment adviser to a Client Plan, may invest plan assets, or cause the investment of plan assets, directly or indirectly, in shares of a collective fund or mutual fund, from which Russell Investments receives compensation. Such added compensation would violate section 406(b)(1) and (b)(2) of the Act.

With respect to section 406(b)(3) of the Act, Russell Investments, as investment manager or investment adviser to a Client Plan, may receive investment advisory fees and ''secondary services'' fees from one or more collective funds or mutual funds in connection with a Client Plan's investment in such funds, subject to the terms and conditions of this proposed exemption, if granted. Such payments would implicate section 406(b)(3) of ERISA.

Prohibited Transaction Exemption 77–4 (PTE 77–4)

7. The Applicants represent that all of the Russell Investments entities to which the exemption would apply are currently part of the same controlled group. In this regard, Russell Investments maintains that—if and to the extent that Russell Investments invests Client Plan assets (directly or indirectly via Collective Funds) in Affiliated Funds, such Russell Investments entities can rely on the relief provided pursuant to PTE 77–4 (42 FR 18732 (April 8, 1977)), except as described below. PTE 77–4 exempts certain purchases and sales by a plan of shares of a registered, open-ended investment company, where the investment adviser of such fund: (a) Is a plan fiduciary or affiliated with a plan fiduciary; and (b) is not an employer of employees covered by the plan.

8. Russell Investments represents that the requested relief is essentially the same as that afforded by PTE 77–4, with the exception of the use of a ''negative consent'' procedure, as discussed below for: (a) Approving Fee Increases with respect to Affiliated Funds, and (b) approving in advance the addition of Affiliated Funds (not previously authorized) as investments ''inside'' a Russell Investments Collective Fund, subject to notice and a right to terminate the original approval at the time a new Affiliated Fund is proposed to be added.

Russell Investments maintains that obtaining advance written approval from a Second Fiduciary can be difficult, particularly in the case of a Collective Fund, where a Second Fiduciary from every investing Client Plan must provide written approval before fees payable to Russell Investments by an Affiliated Fund in which such Client Plans invest indirectly via a Collective Fund can be increased, or before a new investment in an Affiliated Fund that was not previously authorized can be made. Affirmative consent may also be difficult to obtain in a timely fashion in the context of smaller Client Plans.

Negative Consent for Fee Increases

9. Russell Investments requests a negative consent procedure for: (a) Any increase in the rate of a fee previously authorized in writing by the Second Fiduciary of an affected Client Plan; (b) any increase in any fee that results from an addition of services for which a fee is charged; (c) any increase in any fee that results from a decrease in the number or kind of services performed for such fee over an existing rate for such service previously authorized by the Second Fiduciary; and (d) any increase in a fee that results from Russell Investments changing from one of the fee methods to another of the fee methods.

To obtain negative consent authorization with regard to a Fee Increase, Russell Investments must provide certain disclosures, in writing, thirty (30) days in advance of any proposed Fee Increase, including but not limited to any Fee Increase for Secondary Services, as such services are described below. Such disclosures would be delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are to be accompanied by a Termination Form and instructions on the use of such form.

The exemption would permit Russell Investments to implement a Fee Increase, without waiting until the expiration of the thirty (30) day period, provided that implementation of such Fee Increase does not start before Russell Investments delivers to each affected Client Plan the Notice of Intent of Change of Fees, as described in Section II(k), and provided further that any affected Client Plan receives a cash credit equal to its pro rata share of such Fee Increase, for the period from the date of the implementation of such Fee Increase to the earlier of the date of the termination of the investment or the thirtieth (30th) day after the date Russell Investments delivers the Notice of Change of Fee to the Second Fiduciary of each affected Client Plan. In addition, Russell Investments must pay to each affected Client Plan interest on such cash credit. An independent auditor, on at least an annual basis, will verify the proper crediting of the pro rata share of each such Fee Increase and interest. An audit report shall be completed by such auditor no later than six (6) months after the period to which it relates.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the proposed Fee Increase, including but not limited to an increase in the fee for Secondary Services.

Negative Consent for New Affiliated Funds

10. The exemption would further permit a Russell Investments Collective Fund holding the assets of a Client Plan, such as a Target Date Fund, to purchase shares of an Affiliated Fund not previously affirmatively authorized by the Second Fiduciary of such Client Plan, provided: (a) The organizational document of such Collective Fund expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund and such organizational document is disclosed initially to such Client Plan; and (b) Russell Investments satisfies the requirements of the negative consent procedure for obtaining the approval of the Second Fiduciary for each Client Plan invested in such Collective Fund at the time Russell Investments proposes to add an Affiliated Fund to such Collective Fund's portfolio.

Specifically, the Second Fiduciary of each Client Plan invested in such Collective Fund would receive in advance: (a) A notice of Russell Investments' intent to add an Affiliated Fund to the portfolio of such Collective Fund; and (b) certain disclosures in writing, including a summary prospectus of such Affiliated Fund.

The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents, by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the investment by such Collective Fund in such Affiliated Fund.

Authorizations for fee increases and new affiliated funds may also be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of the exemption.

11. Russell Investments represents that because the Second Fiduciary of each Client Plan will receive all of the necessary disclosures and will have an opportunity to terminate the investment in any Affiliated Fund without penalty, such Client Plan and its participants and beneficiaries are adequately protected. Further, Russell Investments states that to the extent it finds it desirable to create an Affiliated Fund with new investment goals, the negative consent procedure will facilitate the addition of an Affiliated Fund into the portfolios of Russell Investments' Collective Funds.

Electronic Disclosures

12. Russell Investments may utilize electronic mail with hyperlinks to documents required to be disclosed by this proposed exemption. Russell Investments will ''actively'' satisfy the various disclosure requirements of this proposed exemption by transmitting emails, rather than relying on ''passive'' postings on a Web site. Russell Investments represents that this method of disclosure will be consistent with the Department's regulations at 29 CFR 2520.104b–l. Russell Investments represents that Client Plans which do not authorize electronic delivery will receive in advance hard copies of the documents required to be disclosed, and hard copies of documents will also be available on request.

Termination

13. A Client Plan invested directly in shares of an Affiliated Fund or invested indirectly through a Collective Fund will have an opportunity to terminate and withdraw from investment in such Affiliated Fund, and, as applicable, to terminate and withdraw from investment in such Collective Fund in the event of a Fee Increase and in the event of the addition of an Affiliated Fund to the portfolio of a Collective Fund. In this regard, a Second Fiduciary will be provided with a Termination Form at least annually and may terminate the authorization to invest directly in shares of an Affiliated Fund or indirectly through a Collective Fund, at will, without penalty to a Client Plan. Termination of the authorization by the Second Fiduciary of a Client Plan investing directly in shares of an Affiliated Fund will result in such Client Plan withdrawing from such Affiliated Fund. Termination of the authorization by the Second Fiduciary of a Client Plan investing indirectly in shares of an Affiliated Fund through a Collective Fund will result in such Client Plan withdrawing from such Collective Fund.

Generally, Russell Investments will process timely requests for withdrawal from an Affiliated Fund within one (1) business day. Withdrawal from a Collective Fund will generally be processed within the same time frame, subject to rules designed to ensure orderly withdrawals and fairness for the withdrawing Client Plans and non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell Investments more than five (5) business days after

receipt by Russell Investments of a Termination Form or other written notification of intent to terminate investment in such Collective Fund from the Second Fiduciary acting on behalf of the withdrawing Client Plan. Russell Investments will pay interest on the settlement amount for the period from receipt by Russell Investments of a Termination Form or other written notification of intent to terminate from the Second Fiduciary, acting on behalf of the withdrawing Client Plan, to the date Russell Investments pays the settlement amount, plus interest thereon.

From the date a Client Plan terminates its investment in an Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell Investments from such Affiliated Fund. Likewise, from the date a Client Plan terminates its investment in a Collective Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell Investments from such Collective Fund, nor will such Client Plan be subject to changes in the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

Receipt of Fees Pursuant to the Fee Methods

14. The exemption, if granted, includes conditions which detail various methods which ensure that Russell Investments complies with the prohibition against a Client Plan paying double investment management fees, investment advisory, and similar fees for the assets of Client Plans invested directly in shares of an Affiliated Fund or invested indirectly in shares of an Affiliated Fund though a Collective Fund. These methods are described below in Section II(a)(l)–(3).

Receipt of Fees for Secondary Services

15. Russell Investments may also receive various fees and expenses for ''Secondary Services,'' which are services other than investment management services, investment advisory services, and any similar service, which are provided by Russell Investments to an Affiliated Fund. These services include accounting, administrative and brokerage services. It is represented that all fees for Secondary Services received by Russell Investments at this time are paid to Russell Investments directly by the Affiliated Funds. The negative consent procedure applicable for a Fee Increase for Secondary Services is discussed above.

Russell Investments affiliates may receive commissions for the performance of brokerage services for the mutual funds. Under the conditions of this proposed exemption, if an Affiliated Fund places brokerage transactions with Russell Investments, Russell Investments will provide the Second Fiduciary of each such Client Plan, at least annually, the disclosure described in Section II(o) of this proposed exemption.

Statutory Findings

16. According to the Applicants, the use of a Termination Form will provide both a record and a regular reminder to the Second Fiduciary of a Client Plan of such plan's rights vis-à-vis investing in Affiliated Funds, either directly or indirectly through a Collective Fund. Further the Applicants state that with very narrow exceptions relating to the negative consent authorizations described above, all of the conditions of PTE 77–4, as amended and/or restated, must be met.

17. The Applicants represent that the proposed exemption is in the interest of Client Plans, because it will allow Russell Investments to manage or advise with respect to the assets of such Client Plans invested in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, in an efficient or timely manner and on terms that might not otherwise be available without exemptive relief.

18. The Applicants represent that the proposed exemption is protective of Client Plans because: (a) Prior to any investment by a Client Plan directly or indirectly in shares of an Affiliated Fund, such investment must be authorized by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Affiliated Fund; (b) Fee Increases and Affiliated Fund additions to the portfolios of Collective Funds will be monitored and approved by the Second Fiduciary, who will have the ability to avoid the effect of such Fee Increases of Affiliated Fund additions; (c) Client Plan investments in shares of an Affiliated Fund, either directly or indirectly, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate such investment, without penalty to such Client Plan; (d) Russell Investments will provide to such Second Fiduciary, in addition to certain initial disclosures, ongoing disclosures regarding such Affiliated Funds; and (e) Russell Investments, in its fiduciary capacity, will: (i) Act in the Best Interest of the Client Plans; (ii) charge fees which are reasonable in relation to the total services it provides to Client Plans; and (iii) not make misleading statements to Client Plans regarding recommended investments, fees, material conflicts of interest, and any other matters relevant to a Client Plan's investment decisions.

Summary

19. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicants satisfies the statutory requirements for an exemption under section 408(a) of the Act.

Proposed Exemption Operative Language

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).

Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code, shall not apply, effective June 1, 2016, to:

(a) The receipt of a fee by Russell Investments, from an Affiliated Fund, in connection with the direct investment in shares of any such Affiliated Fund, by a Client Plan, where Russell Investments serves as a fiduciary with respect to such Client Plan, and where Russell Investments:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined below in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell Investments from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell Investments to any such Affiliated Fund; and

(2) An Affiliated Fund for the provision of Secondary Services by Russell Investments to any such Affiliated Fund; provided that the

conditions, as set forth below, were satisfied, as of June 1, 2016, the effective date of this exemption, and continue to be satisfied thereafter.

Section II. Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund either:

(i) Does not pay to Russell Investments, for the entire period of such investment, any investment management fee, any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; or

(ii) Pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(o), paid by such Affiliated Fund to Russell Investments.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; or

(B) Is returned to such Client Plan, no later than during the immediately following fee period; or

(C) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund; or

(ii) Does not pay to Russell Investments for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Russell Investments, based on total assets of such Client Plan under management by Russell Investments at the plan-level; or

(iii) Such Client Plan pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's pro rata share of any Collective Fund-Level Management Fee paid by such Collective Fund to Russell Investments.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund, the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee (including any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(ii)), and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; or

(ii) Pays indirectly to Russell Investments a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i) above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iii) Pays to Russell Investments a Plan-Level Management Fee, in accordance with Section II(a)(2)(ii) above, based on the total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iv) Pays to Russell Investments a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii) above, from which a further credit has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such further credit which is subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Russell Investments for the provision by Russell Investments of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Russell Investments and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii) and Section II(a)(3)(ii)–(iv), in

calculating a Client Plan's pro rata share of an Affiliated Fund-Level Advisory Fee, Russell Investments must use an amount representing the ''gross'' advisory fee paid to Russell Investments by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Russell Investments by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[15]

(c) Russell Investments, including any officer and any director of Russell Investments, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund, and Russell Investments, including any officer and director of Russell Investments, does not purchase any shares of any Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase, and in connection with any sale, of shares in an Affiliated Fund by a Client Plan indirectly through such Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Russell Investments is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Russell Investments to each Client Plan;

(2) By Russell Investments to each Collective Fund in which a Client Plan invests;

(3) By Russell Investments to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund; and

(4) By Russell Investments to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Russell Investments does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Russell Investments.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Russell Investments by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment directly in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund after such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Russell Investments by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such

[15] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act.

Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund before such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below) of information, concerning such Collective Fund, including but not limited to, the items listed below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Russell Investments to such Client Plan and to such Collective Fund and all other fees to be paid to Russell Investments by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information, described above in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing, as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Russell Investments for investment advisory services and similar services provided by Russell Investments to such Affiliated Fund;

(ii) The fee received by Russell Investments for Secondary Services provided by Russell Investments to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Russell Investments for investment management, investment advisory, and similar services provided by Russell Investments to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Russell Investments for investment management and similar services provided by Russell Investments to such Client Plan at the plan-level; and

(v) The selection by Russell Investments of the applicable fee method, as described above in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary pursuant to this Section II(i) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by Russell Investments via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization;

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(i), or to terminate any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(k) or pursuant to Section II(l) below, then a Termination Form need not be provided pursuant to this Section II(j), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Russell Investments via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within thirty (30) days from the date the Termination Form is sent to such Second Fiduciary by Russell Investments, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Russell Investments within one (1) business day of the date that Russell Investments receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan,

some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Russell Investments by such Affiliated Fund, or any other fees or charges;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective, and such withdrawal will be implemented by Russell Investments within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell Investments more than five business (5) days after the day Russell Investments receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, unless such withdrawal is otherwise prohibited by a governmental entity with jurisdiction over the Collective Fund, or the Second Fiduciary fails to instruct Russell Investments as to where to reinvest or send the withdrawal proceeds; and

(B) From the date Russell Investments receives from a Second Fiduciary, acting on behalf of a Client Plan, that invests in a Collective Fund, a Termination Form or receives some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a pro rata share of any fees arising from the investment by such Client Plan in such Collective Fund, including any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other charges to the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee and any fee for Secondary Services arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Russell Investments, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(l), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(2) Subject to the crediting, interest-payback, and other requirements below, for each Client Plan affected by a Fee Increase, Russell Investments may implement such Fee Increase without waiting for the expiration of the 30-day period, described above in Section II(k)(1), provided Russell Investments does not begin implementation of such Fee Increase before the first day of the 30-day period, described above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Russell Investments delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(ii) Each affected Client Plan receives from Russell Investments a credit in cash equal to each such Client Plan's pro rata share of such Fee Increase to be received by Russell Investments for the period from the date of the implementation of such Fee Increase to the earlier of:

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described above in Section II(j)(3).

(iii) Russell Investments pays to each affected Client Plan the cash credit, as described above in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the earlier of:

(A) The date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates, any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described above in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Russell Investments first implements the Fee Increase to the date Russell Investments pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Russell Investments to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within thirty (30) days from the date Russell Investments sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective upon the date that the final exemption is granted, in the case of (a) a Client Plan which has received the disclosures detailed in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv),

II(h)(2)(v), and II(h)(2)(vi), and which has authorized the investment by such Client Plan in a Collective Fund in accordance with Section II(i)(1)(ii) above, and (b) a Client Plan which has received the disclosures detailed in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and which has authorized investment by such Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii) above, the authorization pursuant to negative consent in accordance with this Section II(l), applies to:

(1) The purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized pursuant to Section II(i)(1)(ii), or, as applicable, Section II(i)(1)(iii), and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund, provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Russell Investments provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such Collective Fund, where such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information described in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form and instructions on the use of such Termination Form, as described in Section II(j)(3); and

(2) Within thirty (30) days from the date Russell Investments sends to the Second Fiduciary of each affected Client Plan, the information described above in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Russell Investments to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Russell Investments is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Russell Investments to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Russell Investments, Russell Investments will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions that are paid to Russell Investments by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Russell Investments I by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(p)(1) Russell Investments provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below):

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(1)(v) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(2) Russell Investments provides to the Second Fiduciary of each Client

Plan invested in a Collective Fund, with the disclosures, as set forth below, and at the times set forth below in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below:

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Russell Investments by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination Form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(2)(viii) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(q) Any disclosure required herein to be made by Russell Investments to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a Web site by Russell Investments, provided:

(1) Russell Investments obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Russell Investments a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Russell Investments in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word ''Russell Investments'' for the word ''administrator'' as set forth therein, and substituting the phrase ''Second Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

(r) The authorizations described in Sections II(k) or II(l) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of those sections.

(s) All of the conditions of PTE 77–4, as amended and/or restated, are met. Notwithstanding this, if PTE 77–4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in Section II(l) above, but only to the extent the requirements of Section II(l) are met. Similarly, if PTE 77–4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in Section II(k) above, if the requirements of Section II(k) are met.

(t) *Standards of Impartial Conduct.* If Russell Investments is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, Russell Investments must comply with the following conditions with respect to the transaction: (1) Russell Investments acts in the Best Interest (as defined below, in Section IV(q)) of the Client Plan, at the time of the Transaction; (2) all compensation received by Russell Investments in connection with the transaction in relation to the total services the fiduciary provides to the Client Plan does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act; and (3) Russell Investments' statements about recommended investments, fees, material conflicts of interest,[16] and any other matters relevant to a Client Plan's investment decisions are not materially misleading at the time they are made.

For purposes of this section, Russell Investments acts in the ''Best Interest'' of the Client Plan when Russell Investments acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

Section III. General Conditions

(a) Russell Investments maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Russell Investments, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Russell Investments shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination, as required below by Section III(b).

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the

[16] A ''material conflict of interest'' exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, the failure of Russell Investments to disclose a material conflict of interest relevant to the services it is providing to a Client Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Russell Investments, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this proposed exemption:

(a) The term ''Russell Investments'' means RIM (f/k/a Russell Investment Management Company), RICap, and any affiliate thereof, as defined below, in Section IV(c).

(b) The term ''Client Plan(s)'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Russell Investments, as defined above in Section IV(a).

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Affiliated Fund(s)'' means Russell Investment Company, a series of mutual funds managed by RIM, and any other diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, established and maintained by Russell Investments now or in the future for which Russell Investments serves as an investment adviser.

(f) The term ''net asset value per share'' and the term ''NAV'' mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means the fiduciary of a Client Plan who is independent of and unrelated to Russell Investments. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Russell Investments if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Russell Investments;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Russell Investments (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption. If an officer, director, partner, or employee of Russell Investments (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term ''Secondary Service(s)'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by Russell Investments to an Affiliated Fund, including, but not limited to, custodial, accounting, administrative services, and brokerage services. Russell Investments may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term ''Collective Fund(s)'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[17] maintained by Russell Investments, and a bank-maintained common or collective investment trust maintained by Russell Investments.

(k) The term ''business day'' means any day that:

(1) Russell Investments is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term ''Fee Increase(s)'' includes any increase by Russell Investments in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(i)(2)(i)–(iv) above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Russell Investments for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv) above; and

(3) Any increase in any fee that results from Russell Investments changing from one of the fee methods, as described above in Section II(a)(1)–(3), to using another of the fee methods, as described above in Section II(a)(1)–(3).

[17] 51 FR 41262 (November 13, 1986).

(m) The term ''Plan-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Russell Investments for any investment management services, investment advisory services, and similar services provided by Russell Investments to such Client Plan at the plan-level. The term ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Russell Investments for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(p), provided by Russell Investments to such Client Plan at the plan-level.

(n) The term ''Collective Fund-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Russell Investments for any investment management services, investment advisory services, and any similar services provided by Russell Investments to such Collective Fund at the collective fund level.

(o) The term ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term ''Asset Allocation Service(s)'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath'' and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds or Collective Funds.

(q) The term ''Best Interest'' means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of Russell Investments, any affiliate or other party.

Effective Date: If granted, this proposed exemption will be effective as of June 1, 2016.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Russell Investments provides discretionary management services at the time the proposed exemption is published in the **Federal Register.**

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing. The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register.**

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 2017.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2017–16295 Filed 8–2–17; 8:45 am]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2018; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1671–F]

RIN 0938–AS99

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for federal fiscal year (FY) 2018 as required by the statute. As required by section 1886(j)(5) of the Social Security Act (the Act), this rule includes the classification and weighting factors for the IRF prospective payment system's (IRF PPS) case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2018. This final rule also revises the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) diagnosis codes that are used to determine presumptive compliance under the ''60 percent rule,'' removes the 25 percent payment penalty for inpatient rehabilitation facility patient assessment instrument (IRF–PAI) late transmissions, removes the voluntary swallowing status item (Item 27) from the IRF–PAI, summarizes comments regarding the criteria used to classify facilities for payment under the IRF PPS, provides for a subregulatory process for certain annual updates to the presumptive methodology diagnosis code lists, adopts the use of height/weight items on the IRF–PAI to determine patient body mass index (BMI) greater than 50 for cases of single-joint replacement under the presumptive methodology, and revises and updates measures and reporting requirements under the IRF quality reporting program (QRP).

DATES:

Effective Dates: These regulations are effective on October 1, 2017.

Applicability Dates: The updated IRF prospective payment rates are applicable for IRF discharges occurring on or after October 1, 2017, and on or before September 30, 2018 (FY 2018). All other changes discussed in this final rule, including the revisions to the ICD–10–CM diagnosis codes that are used to determine presumptive compliance under the 60 percent rule, removal of the 25 percent payment penalty for IRF–PAI late transmissions, removal of the voluntary swallowing status item (Item 27) from the IRF–PAI, provision for a subregulatory process for certain annual updates to the presumptive methodology diagnosis code lists, use of height/weight items on the IRF–PAI to determine patient BMI greater than 50 for cases of single-joint replacement under the presumptive methodology, and the updated measures and reporting requirements under the IRF QRP, are applicable for IRF discharges occurring on or after October 1, 2017.

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Christine Grose, (410) 786–1362, for information about the quality reporting program.

SUPPLEMENTARY INFORMATION: The IRF PPS Addenda along with other supporting documents and tables referenced in this final rule are available through the Internet on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/index.html.*

Executive Summary

A. Purpose

This final rule updates the prospective payment rates for IRFs for FY 2018 (that is, for discharges occurring on or after October 1, 2017, and on or before September 30, 2018) as required under section 1886(j)(3)(C) of the Act. As required by section 1886(j)(5) of the Act, this rule includes the classification and weighting factors for the IRF PPS's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2018. This final rule also revises the ICD–10–CM diagnosis codes that are used to determine presumptive compliance under the 60 percent rule, removes the 25 percent payment penalty for IRF–PAI late transmissions, removes the voluntary swallowing status item (Item 27) from the IRF–PAI, provides for a subregulatory process for certain annual updates to the presumptive methodology diagnosis code lists, summarizes comments regarding the criteria used to classify facilities for payment under the IRF PPS, adopts the use of height/weight items from the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single joint replacement under the presumptive methodology, and revises and updates the measures and reporting requirements under the IRF QRP.

B. Summary of Major Provisions

In this final rule, we use the methods described in the FY 2017 IRF PPS final rule (81 FR 52056) to update the prospective payment rates for FY 2018 using updated FY 2016 IRF claims and the most recent available IRF cost report data, which is FY 2015 IRF cost report data. (*Note:* In the interest of brevity, the rates previously referred to as the ''Federal prospective payment rates'' are now referred to as the ''prospective payment rates''. No change in meaning is intended.) We are also finalizing revisions and updates to the quality measures and reporting requirements under the IRF QRP.

C. Summary of Impacts

Provision description	Transfers
FY 2018 IRF PPS payment rate update.	The overall economic impact of this final rule is an estimated $75 million in increased payments from the Federal government to IRFs during FY 2018.
	Costs
New quality reporting program requirements.	The total reduction in costs in FY 2018 for IRFs for the new quality reporting requirements is estimated to be $2.6 million.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Acronyms, Abbreviations, and Short Forms

Because of the many terms to which we refer by acronym, abbreviation, or short form in this final rule, we are listing the acronyms, abbreviation, and short forms used and their corresponding terms in alphabetical order.

The Act The Social Security Act
AHA American Hospital Association
AHRQ Agency for Healthcare Research and Quality
ASAP Assessment Submission and Processing
ASCA The Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105, enacted on December 27, 2002)
ASPE Office of the Assistant Secretary for Planning and Evaluation
BIMS Brief Interview for Mental Status
BiPAP Bilevel Positive Airway Pressure
BLS U.S. Bureau of Labor Statistics
BMI Body Mass Index
CAM Confusion Assessment Method
CARE Continuity Assessment Record and Evaluation
CAUTI Catheter-Associated Urinary Tract Infection
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CDI Clostridium difficile Infection
CMG Case-Mix Group
CMS Centers for Medicare & Medicaid Services
CPAP Continuous Positive Airway Pressure
CY Calendar year
DRA Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted on February 8, 2006)
DSH Disproportionate Share Hospital
DTI Deep Tissue Injury
FFS Fee-for-Service
FISS Fiscal Intermediary Shared System
FR Federal Register
FY Federal Fiscal Year
GAO Government Accountability Office
GEMS General Equivalence Mapping
HHA Home Health Agency
HHS U.S. Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted on August 21, 1996)
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, 10th Revision, Clinical Modification
IGC Impairment Group Code
IGI IHS Global Insight
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185, enacted on October 6, 2014)
IPPS Inpatient prospective payment system
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRF QRP Inpatient Rehabilitation Facility Quality Reporting Program
IRVEN Inpatient Rehabilitation Validation and Entry
IV Intravenous
LIP Low-Income Percentage
LTCH Long-Term Care Hospital
MA Medicare Advantage (formerly known as Medicare Part C)
MAC Medicare Administrative Contractor
MACRA Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10, enacted on April 16, 2015)
MAP Measures Application Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multifactor Productivity
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173, enacted on December 29, 2007)
MRSA Methicillin-Resistant Staphylococcus aureus
MSPB Medicare Spending Per Beneficiary

NCHS National Center for Health Statistics
NHSN National Healthcare Safety Network
NPUAP National Pressure Ulcer Advisory Panel
NQF National Quality Forum
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
OPPS/ASC Outpatient Prospective Payment System/Ambulatory Surgical Center
PAC Post-Acute Care
PAC/LTC Post-Acute Care/Long-Term Care
PAI Patient Assessment Instrument
PHQ Patient Health Questionnaire
PPACA Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010)
PPR Potentially Preventable Readmissions
PPS Prospective Payment System
PRA Paperwork Reduction Act of 1995 (Pub. L. 104–13, enacted on May 22, 1995)
QIES Quality Improvement Evaluation System
QRP Quality Reporting Program
RIA Regulatory Impact Analysis
RIC Rehabilitation Impairment Category
RFA Regulatory Flexibility Act (Pub. L. 96–354, enacted on September 19, 1980)
RN Registered Nurse
RPL Rehabilitation, Psychiatric, and Long-Term Care
RTI International Research Triangle Institute International
SME Subject Matter Experts
SNF Skilled Nursing Facility
SODF Special Open Door Forum
SSI Supplemental Security Income
TEP Technical Expert Panel
TPN Total Parenteral Nutrition

I. Background

A. Historical Overview of the IRF PPS

Section 1886(j) of the Act provides for the implementation of a per-discharge prospective payment system (PPS) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880), we are providing a general description of the IRF PPS for FYs 2002 through 2017.

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct case-mix groups (CMGs), as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor. We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS which is available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/index.html.* The Web site may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB) Core-Based Statistical Area (CBSA) market definitions, modifications to the CMGs, tier comorbidities, and CMG relative weights, implementation of a new teaching status adjustment for IRFs, revision and rebasing of the market basket index used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities, and long-term care hospitals (LTCHs) (hereinafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments would continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For

more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173, enacted on December 29, 2007) (MMSEA), amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act required the Secretary to develop an increase factor to update the IRF prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007, and on or before March 31, 2008, and the revised FY 2008 IRF prospective payment rates were effective for discharges occurring on or after April 1, 2008, and on or before September 30, 2008. The revised FY 2008 prospective payment rates are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html.*

In the FY 2009 IRF PPS final rule (73 FR 46370), we updated the CMG relative weights, the average length of stay values, and the outlier threshold; clarified IRF wage index policies regarding the treatment of ''New England deemed'' counties and multi-campus hospitals; and revised the regulation text in response to section 115 of the MMSEA to set the IRF compliance percentage at 60 percent (the ''60 percent rule'') and continue the practice of including comorbidities in the calculation of compliance percentages. We also applied a zero percent market basket increase factor for FY 2009 in accordance with section 115 of the MMSEA. For more information on the policy changes implemented for FY 2009, please refer to the FY 2009 IRF PPS final rule (73 FR 46370), in which we published the final FY 2009 IRF prospective payment rates.

In the FY 2010 IRF PPS final rule (74 FR 39762) and in correcting amendments to the FY 2010 IRF PPS final rule (74 FR 50712) that we published on October 1, 2009, we updated the prospective payment rates, the CMG relative weights, the average length of stay values, the rural, LIP, teaching status adjustment factors, and the outlier threshold; implemented new IRF coverage requirements for determining whether an IRF claim is reasonable and necessary; and revised the regulation text to require IRFs to submit patient assessments on Medicare Advantage (MA) (formerly called Medicare Part C) patients for use in the 60 percent rule calculations. Any reference to the FY 2010 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For more information on the policy changes implemented for FY 2010, please refer to the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712), in which we published the final FY 2010 IRF prospective payment rates.

After publication of the FY 2010 IRF PPS final rule (74 FR 39762), section 3401(d) of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by section 10319 of the same Act and by section 1105 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively, hereinafter referred to as ''PPACA''), amended section 1886(j)(3)(C) of the Act and added section 1886(j)(3)(D) of the Act. Section 1886(j)(3)(C) of the Act requires the Secretary to estimate a multifactor productivity (MFP) adjustment to the market basket increase factor, and to apply other adjustments as defined by the Act. The productivity adjustment applies to FYs from 2012 forward. The other adjustments apply to FYs 2010 to 2019.

Sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(i) of the Act defined the adjustments that were to be applied to the market basket increase factors in FYs 2010 and 2011. Under these provisions, the Secretary was required to reduce the market basket increase factor in FY 2010 by a 0.25 percentage point adjustment. Notwithstanding this provision, in accordance with section 3401(p) of the PPACA, the adjusted FY 2010 rate was only to be applied to discharges occurring on or after April 1, 2010. Based on the self-implementing legislative changes to section 1886(j)(3) of the Act, we adjusted the FY 2010 federal prospective payment rates as required, and applied these rates to IRF discharges occurring on or after April 1, 2010, and on or before September 30, 2010. Thus, the final FY 2010 IRF prospective payment rates that were published in the FY 2010 IRF PPS final rule (74 FR 39762) were used for discharges occurring on or after October 1, 2009, and on or before March 31, 2010, and the adjusted FY 2010 IRF prospective payment rates applied to discharges occurring on or after April 1, 2010, and on or before September 30, 2010. The adjusted FY 2010 prospective payment rates are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html.*

In addition, sections 1886(j)(3)(C) and (D) of the Act also affected the FY 2010 IRF outlier threshold amount because they required an adjustment to the FY 2010 RPL market basket increase factor, which changed the standard payment conversion factor for FY 2010. Specifically, the original FY 2010 IRF outlier threshold amount was determined based on the original estimated FY 2010 RPL market basket increase factor of 2.5 percent and the standard payment conversion factor of $13,661. However, as adjusted, the IRF prospective payments are based on the adjusted RPL market basket increase factor of 2.25 percent and the revised standard payment conversion factor of $13,627. To maintain estimated outlier payments for FY 2010 equal to the established standard of 3 percent of total estimated IRF PPS payments for FY 2010, we revised the IRF outlier threshold amount for FY 2010 for discharges occurring on or after April 1, 2010, and on or before September 30, 2010. The revised IRF outlier threshold amount for FY 2010 was $10,721.

Sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(i) of the Act also required the Secretary to reduce the market basket increase factor in FY 2011 by a 0.25 percentage point adjustment. The FY 2011 IRF PPS notice (75 FR 42836) and the correcting amendments to the FY 2011 IRF PPS notice (75 FR 70013) described the required adjustments to the FY 2011 and FY 2010 IRF PPS prospective payment rates and outlier threshold amount for IRF discharges occurring on or after April 1, 2010, and on or before September 30, 2011. It also updated the FY 2011 prospective payment rates, the CMG relative weights, and the average length of stay values. Any reference to the FY 2011 IRF PPS notice in this final rule also includes the provisions effective in the correcting amendments. For more information on the FY 2010 and FY 2011 adjustments or the updates for FY 2011, please refer to the FY 2011 IRF PPS notice (75 FR 42836 and 75 FR 70013).

In the FY 2012 IRF PPS final rule (76 FR 47836), we updated the IRF prospective payment rates, rebased and revised the RPL market basket, and established a new QRP for IRFs in accordance with section 1886(j)(7) of the

Act. We also revised regulation text for the purpose of updating and providing greater clarity. For more information on the policy changes implemented for FY 2012, please refer to the FY 2012 IRF PPS final rule (76 FR 47836), in which we published the final FY 2012 IRF prospective payment rates.

The FY 2013 IRF PPS notice (77 FR 44618) described the required adjustments to the FY 2013 prospective payment rates and outlier threshold amount for IRF discharges occurring on or after October 1, 2012, and on or before September 30, 2013. It also updated the FY 2013 prospective payment rates, the CMG relative weights, and the average length of stay values. For more information on the updates for FY 2013, please refer to the FY 2013 IRF PPS notice (77 FR 44618).

In the FY 2014 IRF PPS final rule (78 FR 47860), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also updated the facility-level adjustment factors using an enhanced estimation methodology, revised the list of diagnosis codes that count toward an IRF's 60 percent rule compliance calculation to determine ''presumptive compliance,'' revised sections of the IRF–PAI, revised requirements for acute care hospitals that have IRF units, clarified the IRF regulation text regarding limitation of review, updated references to previously changed sections in the regulations text, and revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2014, please refer to the FY 2014 IRF PPS final rule (78 FR 47860), in which we published the final FY 2014 IRF prospective payment rates.

In the FY 2015 IRF PPS final rule (79 FR 45872), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also further revised the list of diagnosis codes that count toward an IRF's 60 percent rule compliance calculation to determine ''presumptive compliance,'' revised sections of the IRF–PAI, and revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2015, please refer to the FY 2015 IRF PPS final rule (79 FR 45872) and the FY 2015 IRF PPS correction notice (79 FR 59121).

In the FY 2016 IRF PPS final rule (80 FR 47036), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also adopted an IRF-specific market basket that reflects the cost structures of only IRF providers, a blended one-year transition wage index based on the adoption of new OMB area delineations, a 3-year phase-out of the rural adjustment for certain IRFs due to the new OMB area delineations, and revisions and updates to the IRF QRP. For more information on the policy changes implemented for FY 2016, please refer to the FY 2016 IRF PPS final rule (80 FR 47036).

In the FY 2017 IRF PPS final rule (81 FR 52056), we updated the prospective payment rates, the CMG relative weights, and the outlier threshold amount. We also revised and updated quality measures and reporting requirements under the IRF QRP. For more information on the policy changes implemented for FY 2017, please refer to the FY 2017 IRF PPS final rule (81 FR 52056) and the FY 2017 IRF PPS correction notice (81 FR 59901).

B. Provisions of the PPACA Affecting the IRF PPS in FY 2012 and Beyond

The PPACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the PPACA also added section 1886(j)(3)(C)(ii)(I) (providing for a ''productivity adjustment'' for fiscal year 2012 and each subsequent fiscal year). The productivity adjustment for FY 2018 is discussed in section VI.B. of this final rule. Section 3401(d) of the PPACA requires an additional 0.75 percentage point adjustment to the IRF increase factor for each of FYs 2017, 2018, and 2019. The applicable adjustment for FY 2018 is discussed in section V.B. of this final rule. Section 1886(j)(3)(C)(ii)(II) of the Act notes that the application of these adjustments to the market basket update may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year.

Section 3004(b) of the PPACA also addressed the IRF PPS. It reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) and inserted a new section 1886(j)(7), which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2 percentage point reduction of the applicable market basket increase factor for IRFs that fail to comply with the quality data submission requirements. Application of the 2 percentage point reduction may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Reporting-based reductions to the market basket increase factor will not be cumulative; they will only apply for the FY involved.

Under section 1886(j)(7)(D)(i) and (ii) of the Act, the Secretary is generally required to select quality measures for the IRF QRP from those that have been endorsed by the consensus-based entity which holds a performance measurement contract under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). So long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization, section 1886(j)(7)(D)(ii) of the Act authorizes the Secretary to select non-endorsed measures for specified areas or medical topics when there are no feasible or practical endorsed measure(s).

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF PPS quality reporting data available to the public. In so doing, the Secretary must ensure that IRFs have the opportunity to review any such data prior to its release to the public.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A Fee-for-Service (FFS) patient, the IRF is required to complete the appropriate sections of a patient assessment instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each MA patient, as described in the FY 2010 IRF PPS final rule. All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a 5-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last 4 characters are numeric characters that represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the Grouper software, are available on the

CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.*

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted on August 21, 1996) (HIPAA) compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105, enacted on December 27, 2002) (ASCA) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit an informational-only bill (Type of Bill (TOB) 111), which includes Condition Code 04 to their MAC. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for fiscal year 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the ''Medicare Program; Electronic Submission of Medicare Claims'' final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at *http://www.cms.gov/manuals/downloads/clm104c25.pdf.*

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR, parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered health care providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at *http://www.cms.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the ''Pricer'' software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of health information technology and to promote nationwide health information exchange to improve health care. As discussed in the August 2013 Statement ''Principles and Strategies for Accelerating Health Information Exchange'' (available at *http://www.healthit.gov/sites/default/files/acceleratinghieprinciples_strategy.pdf*), we believe that all individuals, their families, their healthcare and social service providers, and payers should have consistent and timely access to health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the individual's care. Health information technology (health IT) that facilitates the secure, efficient, and effective sharing and use of health-related information when and where it is needed is an important tool for settings across the continuum of care, including inpatient rehabilitation facilities. The effective adoption and use of health information exchange and health IT tools will be essential as IRFs seek to improve quality and lower costs through value-based care.

The Office of the National Coordinator for Health Information Technology (ONC) has released a document entitled ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap'' (Roadmap) (available at *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*). In the near term, the Roadmap focuses on actions that will enable individuals and providers across the care continuum to send, receive, find, and use a common set of electronic clinical information at the nationwide level by the end of 2017. The Roadmap's goals also align with the Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185, enacted on October 6, 2014) (IMPACT Act), which requires assessment data to be standardized and interoperable to allow for exchange of the data.

The Roadmap identifies four critical pathways that health IT stakeholders should focus on now to create a foundation for long-term success: (1) Improve technical standards and implementation guidance for priority data domains and associated elements; (2) rapidly shift and align federal, state, and commercial payment policies from FFS to value-based models to stimulate the demand for interoperability; (3) clarify and align federal and state privacy and security requirements that enable interoperability; and (4) align and promote the use of consistent policies and business practices that support interoperability, in coordination with stakeholders. In addition, ONC has released the final version of the 2017 Interoperability Standards Advisory (available at *https://www.healthit.gov/standards-advisory*), a coordinated catalog of standards and implementation specifications to enable priority health information exchange functions. Providers, payers, and vendors are encouraged to take these health IT standards into account as they implement interoperable health information exchange across the continuum of care, including care settings such as inpatient rehabilitation facilities.

We encourage stakeholders to utilize health information exchange and certified health IT to effectively and efficiently help providers improve internal care delivery practices, engage patients in their care, support management of care across the continuum, enable the reporting of electronically specified clinical quality measures, and improve efficiencies and reduce unnecessary costs. As adoption of certified health IT increases and interoperability standards continue to mature, HHS will seek to reinforce

standards through relevant policies and programs.

II. Summary of Provisions of the Proposed Rule

In the FY 2018 IRF PPS proposed rule (82 FR 20690), we proposed to update the IRF prospective payment rates for FY 2018, revise the lists of ICD–10–CM diagnosis codes that are used to determine presumptive compliance under the 60 percent rule, remove the 25 percent penalty for IRF–PAI late transmissions, remove the voluntary swallowing status item (Item 27) from the IRF–PAI, provide for a subregulatory process for certain annual updates to the presumptive methodology diagnosis code lists, use height/weight items from the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single-joint replacement under the presumptive methodology, and revise and update measures and reporting requirements under the IRF QRP. We also solicited comments regarding the criteria used to classify facilities for payment under the IRF PPS.

The proposed updates to the IRF prospective payment rates for FY 2018 were as follows:

- Update the FY 2018 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data in a budget-neutral manner, as discussed in section III. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20697 through 20699).
- Describe the continued use of FY 2014 facility-level adjustment factors, as discussed in section IV. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20699 through 20700).
- Update the FY 2018 IRF PPS payment rates by the proposed market basket increase factor, as required by section 1886(j)(3)(C)(iii) of the Act, as described in section V. of the FY 2018 IRF PPS proposed rule (82 FR 20690 at 20700).
- Update the FY 2018 IRF PPS payment rates by the FY 2018 wage index and the labor-related share in a budget-neutral manner, as discussed in section V. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20700 through 20703).
- Describe the calculation of the IRF standard payment conversion factor for FY 2018, as discussed in section V. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20703 through 20705).
- Update the outlier threshold amount for FY 2018, as discussed in section VI. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20705 through 20706).
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2018, as discussed in section VI. of the FY 2018 IRF PPS proposed rule (82 FR 20690 at 20706).
- Describe the proposed removal of the 25 percent payment penalty for IRF–PAI late transmissions, as discussed in section VII. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20706 through 20707).
- Describe proposed revisions to the IRF–PAI to remove the voluntary swallowing status item, as discussed in section VIII. of the FY 2018 IRF PPS proposed rule (82 FR 20690 at 20707).
- Describe proposed refinements to the presumptive compliance methodology ICD–10–CM diagnosis codes, as discussed in section IX. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20707 through 20711).
- Solicit comments regarding the criteria used to classify facilities for payment under the IRF PPS, as discussed in section IX. of the FY 2018 IRF PPS proposed rule (82 FR 20690 at 20712).
- Describe the proposed subregulatory process for certain annual updates to the presumptive methodology diagnosis code lists, as discussed in section X. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20713 through 20714).
- Describe the proposed use of height/weight items on the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single joint replacement under the presumptive methodology, as discussed in section XI. of the FY 2018 IRF PPS proposed rule (82 FR 20690 at 20714).
- Describe proposed revisions and updates to quality measures and reporting requirements under the IRF QRP in accordance with section 1886(j)(7), which in part requires IRFs to report certain data specified under section 1899B of the Act, as discussed in section XII. of the FY 2018 IRF PPS proposed rule (82 FR 20690, 20714 through 20742).

III. Analysis and Responses to Public Comments

We received 76 timely responses from the public, many of which contained multiple comments on the FY 2018 IRF PPS proposed rule (82 FR 20690). We received comments from various trade associations, inpatient rehabilitation facilities, individual physicians, therapists, clinicians, health care industry organizations, and health care consulting firms. The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses.

IV. Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2018

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In the FY 2018 IRF PPS proposed rule (82 FR 20690, 20697 through 20699), we proposed to update the CMG relative weights and average length of stay values for FY 2018. As required by statute, we always use the most recent available data to update the CMG relative weights and average lengths of stay. For FY 2018, we proposed to use the FY 2016 IRF claims and FY 2015 IRF cost report data. These data are the most current and complete data available at this time. We note that, as we typically do, we updated our data between the FY 2018 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments. This updated data reflects a more complete set of claims for FY 2016 and additional cost report data for FY 2015.

In the FY 2018 IRF PPS proposed rule, we proposed to apply these data using the same methodologies that we have used to update the CMG relative weights and average length of stay values each fiscal year since we implemented an update to the methodology to use the more detailed CCR data from the cost reports of IRF subprovider units of primary acute care hospitals, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process used to calculate the CMG relative weights for this final rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2018 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2017 IRF PPS final rule (81 FR 52056).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we proposed to update the CMG relative weights for FY 2018 in such a way that total estimated aggregate payments to IRFs for FY 2018 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2018 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2018 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2018 by applying the changes to the CMG relative weights (as discussed in this final rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor (0.9976) that would maintain the same total estimated aggregate payments in FY 2018 with and without the changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor (0.9976) to the FY 2017 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section VI.E. of this final rule, we discuss the use of the existing methodology to calculate the standard payment conversion factor for FY 2018.

In Table 1, ''Relative Weights and Average Length of Stay Values for Case-Mix Groups,'' we present the CMGs, the comorbidity tiers, the corresponding relative weights, and the average length of stay values for each CMG and tier for FY 2018. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	No comorbidities tier	Tier 1	Tier 2	Tier 3	No comorbidities tier
0101	Stroke M>51.05	0.8505	0.7289	0.6734	0.6435	9	9	9	8
0102	Stroke M>44.45 and M<51.05 and C>18.5	1.0680	0.9152	0.8455	0.8080	11	12	10	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.2076	1.0349	0.9560	0.9136	13	13	12	11
0104	Stroke M>38.85 and M<44.45	1.2954	1.1102	1.0256	0.9800	13	13	12	12
0105	Stroke M>34.25 and M<38.85	1.5073	1.2918	1.1933	1.1404	14	14	14	13
0106	Stroke M>30.05 and M<34.25	1.6695	1.4307	1.3217	1.2630	16	16	15	15
0107	Stroke M>26.15 and M<30.05	1.8640	1.5975	1.4758	1.4103	17	17	16	16
0108	Stroke M<26.15 and A>84.5	2.3689	2.0301	1.8754	1.7922	21	23	21	20
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.1373	1.8317	1.6921	1.6170	19	19	19	19
0110	Stroke M<22.35 and A<84.5	2.7867	2.3882	2.2063	2.1083	27	26	23	24
0201	Traumatic brain injury M>53.35 and C>23.5	0.8537	0.6885	0.6269	0.5749	9	9	9	7
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0944	0.8827	0.8037	0.7369	12	11	10	9
0203	Traumatic brain injury M>44.25 and C<23.5	1.2638	1.0192	0.9280	0.8510	12	13	11	11
0204	Traumatic brain injury M>40.65 and M<44.25	1.3883	1.1197	1.0195	0.9348	11	12	12	12
0205	Traumatic brain injury M>28.75 and M<40.65	1.6317	1.3160	1.1982	1.0987	15	15	14	13
0206	Traumatic brain injury M>22.05 and M<28.75	1.9691	1.5881	1.4460	1.3259	18	18	16	15
0207	Traumatic brain injury M<22.05	2.5114	2.0255	1.8443	1.6911	28	23	19	18
0301	Non-traumatic brain injury M>41.05	1.1608	0.9425	0.8574	0.8103	10	11	10	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.4099	1.1447	1.0414	0.9842	13	13	12	12
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.6565	1.3450	1.2236	1.1563	15	15	13	13
0304	Non-traumatic brain injury M<26.15	2.1517	1.7470	1.5893	1.5020	21	19	17	16
0401	Traumatic spinal cord injury M>48.45	0.9016	0.8476	0.7569	0.6842	12	12	10	9
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.2903	1.2130	1.0831	0.9792	13	14	13	12
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.0938	1.9683	1.7576	1.5889	22	22	19	18
0404	Traumatic spinal cord injury M<16.05 and A>63.5	3.6744	3.4541	3.0844	2.7884	42	36	31	32
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.3965	3.1929	2.8512	2.5776	33	35	31	27
0501	Non-traumatic spinal cord injury M>51.35	0.9313	0.7002	0.6637	0.6090	9	9	9	7
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.2192	0.9167	0.8689	0.7973	12	10	10	10
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.5288	1.1495	1.0895	0.9998	16	13	12	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.7362	1.3054	1.2373	1.1354	17	15	14	13
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	1.9897	1.4960	1.4179	1.3011	18	17	16	15
0506	Non-traumatic spinal cord injury M<23.75	2.7549	2.0714	1.9632	1.8015	26	23	21	20
0601	Neurological M>47.75	1.0661	0.8148	0.7562	0.6879	10	9	9	8
0602	Neurological M>37.35 and M<47.75	1.3922	1.0640	0.9876	0.8984	12	12	11	11
0603	Neurological M>25.85 and M<37.35	1.7073	1.3049	1.2111	1.1017	14	14	13	13
0604	Neurological M<25.85	2.2213	1.6977	1.5757	1.4334	19	18	16	16
0701	Fracture of lower extremity M>42.15	1.0372	0.8298	0.7877	0.7175	12	11	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.3168	1.0534	1.0001	0.9109	12	12	11	11
0703	Fracture of lower extremity M>28.15 and M<34.15	1.5903	1.2722	1.2078	1.1001	15	14	14	13
0704	Fracture of lower extremity M<28.15	2.0160	1.6128	1.5311	1.3946	18	18	17	16
0801	Replacement of lower extremity joint M>49.55	0.8710	0.6418	0.6113	0.5644	8	8	7	7
0802	Replacement of lower extremity joint M>37.05 and M<49.55	1.1197	0.8249	0.7858	0.7255	11	10	9	9
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5.	1.4515	1.0694	1.0187	0.9406	13	13	12	11
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5.	1.3342	0.9830	0.9363	0.8645	12	11	11	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.5821	1.1657	1.1103	1.0252	14	13	12	12
0806	Replacement of lower extremity joint M<22.05	1.9159	1.4116	1.3445	1.2415	16	16	15	14
0901	Other orthopedic M>44.75	1.0053	0.8078	0.7245	0.6736	10	10	9	8
0902	Other orthopedic M>34.35 and M<44.75	1.3219	1.0621	0.9526	0.8858	12	12	11	10

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	No comorbidities tier	Tier 1	Tier 2	Tier 3	No comorbidities tier
0903	Other orthopedic M>24.15 and M<34.35	1.6223	1.3035	1.1691	1.0870	15	14	13	13
0904	Other orthopedic M<24.15	2.0319	1.6327	1.4643	1.3615	18	18	16	15
1001	Amputation, lower extremity M>47.65	1.0461	0.9022	0.7937	0.7245	10	11	10	9
1002	Amputation, lower extremity M>36.25 and M<47.65	1.3734	1.1844	1.0421	0.9512	13	13	12	11
1003	Amputation, lower extremity M<36.25	2.0115	1.7348	1.5262	1.3931	18	18	17	16
1101	Amputation, non-lower extremity M>36.35	1.3160	1.1741	1.0154	0.8714	12	14	12	10
1102	Amputation, non-lower extremity M<36.35	1.9052	1.6998	1.4701	1.2615	17	23	15	14
1201	Osteoarthritis M>37.65	1.2296	0.9239	0.8627	0.7939	9	11	10	10
1202	Osteoarthritis M>30.75 and M<37.65	1.5807	1.1877	1.1090	1.0206	11	13	13	12
1203	Osteoarthritis M<30.75	1.9306	1.4506	1.3545	1.2466	12	15	15	14
1301	Rheumatoid, other arthritis M>36.35	1.2253	0.9248	0.8323	0.7983	10	10	10	9
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.6852	1.2720	1.1447	1.0980	16	14	12	13
1303	Rheumatoid, other arthritis M<26.15	2.1972	1.6584	1.4925	1.4315	18	18	16	16
1401	Cardiac M>48.85	0.9289	0.7480	0.6832	0.6204	10	8	8	8
1402	Cardiac M>38.55 and M<48.85	1.2231	0.9849	0.8997	0.8169	12	11	10	10
1403	Cardiac M>31.15 and M<38.55	1.4635	1.1785	1.0764	0.9774	13	13	12	11
1404	Cardiac M<31.15	1.8540	1.4929	1.3637	1.2382	17	16	15	14
1501	Pulmonary M>49.25	1.0171	0.8497	0.7768	0.7449	10	9	9	8
1502	Pulmonary M>39.05 and M<49.25	1.3119	1.0959	1.0020	0.9607	11	12	11	10
1503	Pulmonary M>29.15 and M<39.05	1.5971	1.3341	1.2197	1.1696	14	14	12	12
1504	Pulmonary M<29.15	1.9783	1.6526	1.5109	1.4487	20	16	15	14
1601	Pain syndrome M>37.15	1.1488	0.9072	0.8293	0.7609	10	11	10	9
1602	Pain syndrome M>26.75 and M<37.15	1.5294	1.2078	1.1040	1.0130	12	14	13	12
1603	Pain syndrome M<26.75	1.9062	1.5054	1.3759	1.2625	14	16	15	14
1701	Major multiple trauma without brain or spinal cord injury M>39.25.	1.1972	0.9344	0.8406	0.7717	10	10	10	9
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25.	1.5294	1.1936	1.0739	0.9858	14	14	12	12
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05.	1.8066	1.4100	1.2686	1.1645	17	15	14	14
1704	Major multiple trauma without brain or spinal cord injury M<25.55.	2.2842	1.7827	1.6039	1.4723	21	19	17	17
1801	Major multiple trauma with brain or spinal cord injury M>40.85.	1.2772	0.9992	0.8861	0.8123	12	11	10	10
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85.	1.8275	1.4298	1.2679	1.1624	17	16	14	14
1803	Major multiple trauma with brain or spinal cord injury M<23.05.	2.8872	2.2589	2.0031	1.8364	33	26	21	20
1901	Guillian Barre M>35.95	1.2930	1.0758	0.9919	0.9474	13	12	12	11
1902	Guillian Barre M>18.05 and M<35.95	2.2297	1.8550	1.7103	1.6336	23	20	21	18
1903	Guillian Barre M<18.05	3.7343	3.1069	2.8646	2.7361	41	32	28	30
2001	Miscellaneous M>49.15	0.9444	0.7644	0.6979	0.6338	9	9	8	8
2002	Miscellaneous M>38.75 and M<49.15	1.2403	1.0039	0.9167	0.8325	11	11	10	10
2003	Miscellaneous M>27.85 and M<38.75	1.5431	1.2490	1.1404	1.0357	14	14	13	12
2004	Miscellaneous M<27.85	1.9716	1.5958	1.4571	1.3233	18	17	15	15
2101	Burns M>0	1.8289	1.8238	1.3855	1.2884	29	17	15	14
5001	Short-stay cases, length of stay is 3 days or fewer				0.1565				2
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6581				7
5102	Expired, orthopedic, length of stay is 14 days or more				1.6393				18
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.8132				9
5104	Expired, not orthopedic, length of stay is 16 days or more				2.0334				21

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the revisions for FY 2018 would affect particular CMG relative weight values, which would affect the overall distribution of payments within CMGs and tiers. Note that, because we proposed to implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2018 would not be affected as a result of the CMG relative weight revisions. However, the revisions would affect the distribution of payments within CMGs and tiers.

TABLE 2—DISTRIBUTIONAL EFFECTS OF THE CHANGES TO THE CMG RELATIVE WEIGHTS

[FY 2017 values compared with FY 2018 values]

Percentage change in CMG relative weights	Number of cases affected	Percentage of cases affected
Increased by 15% or more	51	0.0
Increased by between 5% and 15%	1,802	0.5
Changed by less than 5%	397,273	99.%
Decreased by between 5% and 15%	999	0.2
Decreased by 15% or more	0	0.0

As Table 2 shows, 99.3 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the revisions for FY 2018. The largest estimated increase in the CMG relative weight values that affects the largest number of IRF discharges would be a 4.0 percent change in the CMG relative weight value for CMG 0603—Neurological, with a motor score greater than 25.85 and less than 37.35—in tier 1. In the FY 2016 claims data, 1,334 IRF discharges (0.3 percent of all IRF discharges) were classified into this CMG and tier.

The largest decrease in a CMG relative weight value affecting the largest number of IRF cases would be a 3.6 percent decrease in the CMG relative weight for CMG 0506—Non-traumatic spinal cord injury, with a motor score less than 23.75—in tier 3. In the FY 2016 IRF claims data, this change would have affected 2,421 cases (0.6 percent of all IRF cases).

The proposed changes in the average length of stay values for FY 2018, compared with the FY 2017 average length of stay values, are small and do not show any particular trends in IRF length of stay patterns.

We received 3 comments on the proposed update to the CMG relative weights and average length of stay values for FY 2018, which are summarized below.

Comment: The commenters were supportive of our proposal to use the most recent data available to update the relative weights and average length of stays values for FY 2018. The commenters encouraged CMS to assess costs within CMGs and requested that CMS make available a report or analysis that is performed to update the relative weights as well as provide cost data related to comorbidities. Additionally, a commenter requested that we outline the methodology used to calculate the average length of stay values in the FY 2018 IRF PPS proposed rule.

Response: We appreciate the commenters' support of our proposal to use the most recent data available to update the relative weights and average length of stays values for FY 2018. We note that we are conducting ongoing evaluation of costs across CMGs and those related to comorbidities and will take the commenter's request for a report or analysis into consideration when developing future updates to the CMG relative weights. As we most recently discussed in the FY 2017 IRF PPS final rule (81 FR 52071), the methodology for calculating the average length of stay values is available for download from the IRF PPS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Research.html.*

Final Decision: After consideration of the public comments, we are finalizing our proposal to update the CMG relative weight and average length of stay values for FY 2018, as shown in Table 1 of this final rule. These updates are effective October 1, 2017.

V. Facility-Level Adjustment Factors

Section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. Under this authority, we currently adjust the prospective payment amount associated with a CMG to account for facility-level characteristics such as an IRF's LIP, teaching status, and location in a rural area, if applicable, as described in § 412.624(e).

Based on the substantive changes to the facility-level adjustment factors that were adopted in the FY IRF PPS 2014 final rule (78 FR 47860, 47868 through 47872), in the FY 2015 IRF PPS final rule (79 FR 45872, 45882 through 45883), we froze the facility-level adjustment factors at the FY 2014 levels for FY 2015 and all subsequent years (unless and until we propose to update them again through future notice-and-comment rulemaking). For FY 2018, we will continue to hold the adjustment factors at the FY 2014 levels as we continue to monitor the most current IRF claims data available and continue to evaluate and monitor the effects of the FY 2014 changes.

VI. FY 2018 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the IRF PPS payment, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of a productivity adjustment. In addition, sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(v) of the Act require the application of a 0.75 percentage point reduction to the market basket increase factor for FY 2018. However, section 411(b) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) amended section 1886(j)(3)(C) of the Act by adding clause (iii), which provides that the increase factor for fiscal year 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent. In accordance with section 1886(j)(3)(C)(iii) of the Act, we are applying an increase factor of 1.0 percent to update the IRF prospective payment rates for FY 2018 in this final rule.

For FY 2015, IRF PPS payments were updated using the 2008-based RPL market basket. Beginning with the FY 2016 IRF PPS, we created and adopted a stand-alone IRF market basket, which was referred to as the 2012-based IRF market basket, reflecting the operating and capital cost structures for freestanding IRFs and hospital-based IRFs. The general structure of the 2012-based IRF market basket is similar to the 2008-based RPL market basket; however, we made several notable changes. In developing the 2012-based IRF market basket, we derived cost weights from Medicare cost report data for both freestanding and hospital-based IRFs (the 2008-based RPL market basket was based on freestanding data only), incorporated the 2007 Input-Output data from the Bureau of Economic Analysis (the 2008-based RPL market basket was based on the 2002 Input-Output data); used new price proxy blends for two cost categories (Fuel, Oil, and Gasoline and Medical Instruments); added one additional cost category (Installation, Maintenance, and Repair), which was previously included in the residual All Other Services: Labor-Related cost category of the 2008-based RPL market basket; and eliminated three cost categories (Apparel, Machinery & Equipment, and Postage). The FY 2016 IRF PPS final rule (80 FR 47046 through 47068) contains a complete discussion of the development of the 2012-based IRF market basket.

B. FY 2018 Market Basket Update and Productivity Adjustment

As previously noted, in accordance with section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA, we are applying an increase factor of 1.0 percent to update the IRF prospective payment rates for FY 2018 in this final rule. For comparison purposes, we are providing a current estimate of what the proposed IRF increase factor would have been for FY 2018 prior to the enactment of section 411(b) of MACRA.

This estimate is based on the same methodology described in the FY 2017 IRF PPS final rule (81 FR 52071) and IHS Global Inc.'s (IGI) second quarter

2017 forecast of the market basket update and MFP adjustment with historical data through the first quarter 2017. IGI is a nationally recognized economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP.

Using this methodology, the FY 2018 payment increase factor would be 1.25 percent (based on IGI's second quarter 2017 forecast with historical data through the first quarter of 2017), reflecting a FY 2018 estimated market basket update of 2.6 percent as required by section 1886(j)(3)(C) of the Act, with an estimated productivity adjustment of 0.6 percentage point as required by section 1886(j)(3)(C)(ii)(I) of the Act, and a 0.75 percentage point reduction as required by sections 1886(j)(3)(C)(ii)(II) and 1886(j)(3)(D)(v) of the Act. However, section 411(b) of MACRA amended section 1886(j)(3)(C) of the Act by adding clause (iii), which provides that the increase factor for fiscal year 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent.

For FY 2018, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent. As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, as amended by MACRA, the Secretary will update the IRF PPS payment rates for FY 2018 by 1.0 percent, as section 1886(j)(3)(C)(iii) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2018.

We received eight public comments on the proposed payment update and productivity adjustment, which are summarized below.

Comment: Several commenters generally supported the proposed payment update for FY 2018.

Response: We appreciate the commenters' support for the proposed payment update for FY 2018.

Comment: A few commenters stated that the payment update does not keep up with inflationary costs in healthcare or the effects of the sequestration, and is therefore effectively a reduction in payments. As a result, the commenters expressed concern that their hospitals' financial viability and their ability to care for their patients will be threatened.

Response: As discussed, and in accordance with section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA, we are applying an increase factor of 1.0 percent to update the IRF prospective payment rates for FY 2018 in this final rule. Section 1886(j)(3)(C)(iii) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2018.

Comment: Several commenters expressed concerns regarding the applicability of the PPACA-mandated MFP to the IRF setting. Commenters stated their belief that the theory underlying the productivity adjustment is that Medicare providers should be able to achieve the same level of productivity improvement as workers across the U.S. economy since the MFP adjustment is applied using a measure based on the total private nonfarm business sector rather than the rehabilitation sector. However, several commenters claimed that it is unlikely, given that IRF services are so labor-intensive, that productivity improvements will be generated by the rehabilitation hospital industry at a pace matching the productivity of the economy at large on an ongoing, consistent basis as currently contemplated by the PPACA.

Several commenters noted that general economic growth could lead to larger productivity adjustments that may not be correlated to gains in the IRF sector. One commenter noted that the requirements applicable to IRFs (for example, the intensity of therapy requirements, pre-admission screening requirements, and medical director coverage requirements) also make it difficult for the IRF industry to achieve significant productivity gains. Commenters generally expressed concerns that, while other medical fields may benefit from improved technology that yields increased productivity, rehabilitation, by its nature and by virtue of the requirements applicable to it, cannot advance productivity through technology or other means in the same way other medical fields can. Additionally, commenters expressed concerns that if the economy grows at a faster rate and IRFs' costs related to the IRF QRP increase, the productivity adjustments will likely also become more pronounced.

Finally, these commenters respectfully requested that we carefully monitor the impact these productivity adjustments have on the rehabilitation hospital sector, provide feedback to Congress as appropriate, and utilize any authority the agency has to reduce the productivity adjustment.

Response: We acknowledge the commenters' concerns regarding MFP growth at the economy-wide level and its application to IRFs. As stated above, section 1886(j)(3)(C)(ii)(I) of the Act requires the application of a productivity adjustment to the IRF PPS market basket increase factor. Under section 1886(j)(3)(C)(ii)(I) of the Act, the productivity adjustment is required to be equal to the 10-year moving average changes in annual economy-wide private nonfarm business MFP (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period).

However, as stated above, in accordance with section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA, the increase factor for FY 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent. Section 1886(j)(3)(C)(iii) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2018. We will continue to monitor the impact of the payment updates, including the effects of the productivity adjustment, on IRFs as well as beneficiary access to care.

Comment: One commenter (MedPAC) stated that they understand CMS is required to implement the statutory update; however, the commenter noted that after reviewing many factors, they determined that Medicare's current payment rates for IRFs appear to be more than adequate and therefore recommended that the Congress reduce the IRF payment rate by 5 percent for FY 2018. The commenter appreciated that CMS cited its recommendation even while noting that the Secretary does not have the authority to deviate from statutorily mandated updates.

Response: As discussed, in accordance with section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA, the increase factor for FY 2018, after the application of the productivity adjustment and other adjustment, must be 1.0 percent. Section 1886(j)(3)(C)(iii) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2018.

Final Decision: Based on careful consideration of the comments, we are finalizing the FY 2018 payment update for IRF payments of 1.0 percent, as required by section 1886(j)(3)(C)(iii) of the Act, as added by section 411(b) of MACRA.

C. Labor-Related Share for FY 2018

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related

costs of the prospective payment rates computed under section 1886(j)(3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2012-based IRF market basket, we proposed to calculate the labor-related share for FY 2018 as the sum of the FY 2018 relative importance of 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 portion of the Capital-Related cost weight from the 2012-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2012-based IRF labor-related share, see the FY 2016 IRF final rule (80 FR 47066 through 47068).

Using this method and IGI's first quarter 2017 forecast for the 2012-based IRF market basket, the proposed IRF labor-related share for FY 2018 was 70.7 percent. We proposed that if more recent data were subsequently available, we would use such data to determine the FY 2018 IRF labor-related share in the final rule.

Incorporating the most recent estimate of the 2012-based IRF market basket based on IGI's second quarter 2017 forecast with historical data through the first quarter of 2017, the sum of the relative importance for FY 2018 operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services) using the 2012-based IRF market basket is 66.9 percent. We proposed that the portion of Capital-Related Costs that is influenced by the local labor market is estimated to be 46 percent. Incorporating the most recent estimate of the FY 2018 relative importance of Capital-Related costs from the 2012-based IRF market basket based on IGI's second quarter 2017 forecast with historical data through the first quarter of 2017, which is 8.3 percent, we take 46 percent of 8.3 percent to determine the labor-related share of Capital for FY 2018. As we proposed, we then add this amount (3.8 percent) to the sum of the relative importance for FY 2018 operating costs (66.9 percent) to determine the total labor-related share for FY 2018 of 70.7 percent.

TABLE 3—IRF LABOR-RELATED SHARE

	FY 2018 Final labor-related share [1]	FY 2017 Final labor related share [2]
Wages and Salaries	47.8	47.7
Employee Benefits	11.2	11.3
Professional Fees: Labor-related	3.4	3.5
Administrative and Facilities Support Services	0.8	0.8
Installation, Maintenance, and Repair Services	1.9	1.9
All Other: Labor-related Services	1.8	1.8
Subtotal	66.9	67.0
Labor-related portion of capital (46%)	3.8	3.9
Total Labor-Related Share	70.7	70.9

[1] Based on the 2012-based IRF Market Basket, IHS Global Inc. 2nd quarter 2017 forecast with historical data through the first quarter of 2017.
[2] **Federal Register** (81 FR 52073).

Final Decision: We did not receive any public comments on the proposed labor-related share for FY 2018. We are finalizing the FY 2018 labor-related share of 70.7 percent as proposed.

D. Wage Adjustment

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

For FY 2018, we proposed to maintain the policies and methodologies described in the FY 2017 IRF PPS final rule (81 FR 52055, 52073 through 52074) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we proposed to use the CBSA labor market area definitions and the FY 2017 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2017 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2012, and before October 1, 2013 (that is, FY 2013 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We proposed to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2018 IRF PPS wage index.

We received 4 public comments on these proposals, which are summarized below.

Comment: Commenters suggested that we should use the FY 2018 IPPS pre-reclassified acute care hospital wage index in the calculation of the FY 2018

IRF PPS wage index, as other post-acute and acute care settings do, rather than using the FY 2017 IPPS pre-reclassified acute care hospital wage index, as we do in the IRF PPS. Commenters indicated that using the same wage index data for the IRF PPS that is used in other post-acute care settings would eliminate one difference between Medicare payments for IRFs and Medicare payments for other post-acute care providers, thereby allowing IRFs to demonstrate their cost-effectiveness relative to other competing post-acute care service providers in the alternative payment models.

Response: Consistent with historical practice, we proposed to update the IRF wage index for FY 2018 using the FY 2017 pre-reclassification acute care hospital wage index (that is, using a one-year lag of the hospital wage index). At the point we use these data for the IRF wage index, these values are more stable and do not tend to change. The FY 2017 pre-reclassification and pre-floor hospital wage index values are based on data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 2013. We believe that data from the FY 2013 cost reporting periods are appropriate to determine the applicable wage index values under the IRF PPS in this final rule as they are the most recent final data available.

Comment: One commenter requested that, until a new wage index system is implemented, we should institute a smoothing variable to be applied to the current IRF wage index to reduce the fluctuations IRFs experience annually.

Response: As stated above, under section 1886(j)(6) of the Act, we adjust IRF PPS rates to account for differences in area wage levels. Any perceived volatility in the wage index is predicated upon volatility in actual wages in that area and reflects real differences in area wage levels. As we believe that the application of a smoothing variable would make the wage index values less reflective of the area wage levels, it would not be appropriate to implement such a change to the IRF wage index policy.

As we most recently discussed in the FY 2017 IRF PPS final rule (81 FR 52075), section 3137(b) of the PPACA required us to submit a report to the Congress by December 31, 2011 that included a plan to reform the hospital wage index system. This report describes the concept of a Commuting Based Wage Index as a potential replacement to the current Medicare wage index methodology. While this report addresses the goals of broad based Medicare wage index reform, no consensus has been achieved regarding how best to implement a replacement system. This concern will be taken into consideration while we continue to explore potential wage index reforms. The report that we submitted is available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html.*

Final Decision: After careful consideration of the comments, we are finalizing our proposal to use the CBSA labor market area definitions and the FY 2017 pre-reclassification and pre-floor hospital wage index data for areas with wage data. We are also finalizing our proposal to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data.

2. Update

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor acute care hospital wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. In the FY 2016 IRF PPS final rule (80 FR 47036, 47068), we established an IRF wage index based on FY 2011 acute care hospital wage data to adjust the FY 2016 IRF payment rates. We also adopted the revised CBSAs set forth by OMB. The current CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. 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, and provided guidance on the use of the delineations of these statistical areas based on new standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252). A copy of this bulletin may be obtained at *https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf.*

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. 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. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at *https://obamawhitehouse.archives.gov/sites/default/files/omb/bulletins/2015/15-01.pdf.*

According to OMB, the bulletin establishes revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provides delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas. OMB Bulletin No. 15–01 made the following changes that are relevant to the IRF wage index:

- Garfield County, OK, with principal city Enid, OK, which was a Micropolitan (geographically rural) area, now qualifies as an urban new CBSA 21420 called Enid, OK.
- The county of Bedford City, VA, a component of the Lynchburg, VA CBSA 31340, changed to town status and is added to Bedford County. Therefore, the county of Bedford City (SSA State county code 49088, FIPS State County Code 51515) is now part of the county of Bedford, VA (SSA State county code 49090, FIPS State County Code 51019). However, the CBSA remains Lynchburg, VA, 31340.
- The name of Macon, GA, CBSA 31420, as well as a principal city of the Macon-Warner Robins, GA combined statistical area, is now Macon-Bibb County, GA. The CBSA code remains as 31420.

We believe that it is important for the IRF PPS to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. As discussed in the FY 2017 Inpatient prospective payment system (IPPS) and Long-Term Care Hospital (LTCH) PPS final rule (81 FR 56913), these updated labor market area definitions were implemented under the IPPS beginning on October 1, 2016. Therefore, we proposed to implement these revisions for the IRF PPS beginning October 1,

2017, consistent with our historical practice of modeling IRF PPS adoption of the labor market area delineations after IPPS adoption of these delineations.

We did not receive any comments on our proposal to adopt the revised OMB delineations.

Final Decision: As we did not receive any comments on our proposal to adopt the new OMB delineations, we are finalizing the implementation of the revised OMB delineations as described in the July 15, 2015 OMB Bulletin No. 15–01, effective beginning October 1, 2017 with the FY 2018 IRF PPS wage index.

3. Transition Period

In FY 2016, we applied a transition period when implementing the OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, as this bulletin contained a number of significant changes that resulted in substantial payment implications for some IRF providers. We proposed to incorporate the CBSA changes published in the most recent OMB bulletin without a transition period as we anticipate that these changes will have minor effects for a single IRF provider. One provider, located in Garfield County, OK and designated as rural in FY 2017, will be designated as urban in FY 2018. While this provider will no longer have the 14.9 percent rural adjustment in FY 2018, this provider will experience an increase of 13 percent in their wage index value. As this provider is not expected to experience as steep of a reduction in payments as the majority of facilities for which a phase out of the rural adjustment was implemented, we do not believe it is appropriate or necessary to adopt a transition policy. As the changes made in OMB Bulletin No 15–01 are minor and do not have a large effect on a substantial number of providers, we did not propose a transition period to adopt these updates.

In FY 2016, we applied a 1-year blended wage index for all IRF providers to mitigate the impact of the wage index change due to the implementation of the revised CBSA delineations. In FY 2016, all IRF providers received a blended wage index using 50 percent of their FY 2016 wage index based on the revised OMB CBSA delineations and 50 percent of their FY 2016 wage index based on the OMB delineations used in FY 2015. This 1-year blended wage index became effective on October 1, 2015 and expired on September 30, 2016.

For FY 2016, in addition to the blended wage index, we also adopted a three-year budget neutral phase out of the rural adjustment for FY 2015 rural IRFs that became urban in FY 2016 under the revised CBSA delineations. In FY 2016, IRFs that were designated as rural in FY 2015 and became designated as urban in FY 2016 received two-thirds of the 2015 rural adjustment of 14.9 percent. In FY 2017, the second year of the 3-year phase out, these IRFs received one-third of the 2015 rural adjustment of 14.9 percent, as finalized in the FY 2017 IRF PPS final rule (81 FR 52055, 52074 through 52076). FY 2018 represents the third and final year of the three-year phase out of the rural adjustment. We will no longer apply any portion of the rural adjustment for IRFs that became urban in FY 2016 under the revised CBSA delineations, as finalized in the FY 2016 IRF PPS final rule (80 FR 47036, 47073 through 47074). We did not propose any additional wage index transition adjustments for IRF providers due to the adoption of the new OMB delineations in FY 2016. We refer readers to the FY 2016 IRF PPS final rule (80 FR 47036, 47068 through 47076) for a full discussion of our implementation of the new OMB labor market area delineations for the FY 2016 wage index. The wage index applicable to FY 2018 is available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html.* Table A is for urban areas, and Table B is for rural areas.

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted federal payment rate for IRFs by the FY 2018 labor-related share based on the 2012-based IRF market basket (70.7 percent) to determine the labor-related portion of the standard payment amount. A full discussion of the calculation of the labor-related share is located in section VI.C of this final rule. We then multiply the labor-related portion by the applicable IRF wage index from the tables in the addendum to this final rule. These tables are available through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html.*

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We proposed to calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689), codified at § 412.624(e)(1), as described in the steps below. We proposed to use the listed steps to ensure that the FY 2018 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2013 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1. Determine the total amount of the estimated FY 2017 IRF PPS payments, using the FY 2017 standard payment conversion factor and the labor-related share and the wage indexes from FY 2017 (as published in the FY 2017 IRF PPS final rule (81 FR 52056)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2018 standard payment conversion factor and the FY 2018 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2018 budget-neutral wage adjustment factor of 1.0007.

Step 4. Apply the FY 2018 budget-neutral wage adjustment factor from step 3 to the FY 2017 IRF PPS standard payment conversion factor after the application of the increase factor to determine the FY 2018 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2018 in section VI.E of this final rule.

We invited public comment on the proposed IRF wage adjustment for FY 2018. We did not receive any comments on the proposed IRF wage adjustment for FY 2018.

Final Decision: As we did not receive any comments on the proposed IRF wage adjustment for FY 2018, we are finalizing a budget-neutral wage adjustment factor of 1.0007 for FY 2018.

E. Description of the IRF Standard Payment Conversion Factor and Payment Rates for FY 2018

To calculate the standard payment conversion factor for FY 2018, as illustrated in Table 4, we begin by applying the increase factor for FY 2018, as adjusted in accordance with sections 1886(j)(3)(C)(iii) of the Act, as added by MACRA, to the standard payment conversion factor for FY 2017 ($15,708). Applying the 1.0 percent increase factor for FY 2018 to the standard payment conversion factor for FY 2017 of $15,708 yields a standard payment amount of $15,865. Then, we apply the budget neutrality factor for the FY 2018 wage index and labor-related share of 1.0007, which results in a standard payment amount of $15,876. We next apply the budget neutrality factor for the revised CMG relative weights of 0.9976, which

results in the standard payment conversion factor of $15,838 for FY 2018.

TABLE 4—CALCULATIONS TO DETERMINE THE FY 2018 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for FY 2017	$15,708
Market Basket Increase Factor for FY 2018 (1.0 percent), as required by section 1886(j)(3)(C)(iii) of the Act	× 1.0100
Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0007
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9976
FY 2018 Standard Payment Conversion Factor	= $15,838

We received four comments on the proposed FY 2018 standard payment conversion factor.

Comment: The commenters noted that the FY 2018 standard payment conversion factor does not include any additional payment to IRFs for the time and resources needed to complete assessments for quality reporting.

Response: Section 1886(j)(3) of the Act does not provide the Secretary with the authority to adjust payments to reflect increases in costs due to quality reporting requirements. We will continue to monitor the impact of the FY 2018 payment updates and quality reporting requirements on IRF providers.

Final Decision: After careful consideration of the comments we received, we are finalizing the IRF standard payment conversion factor of $15,838 for FY 2018.

After the application of the CMG relative weights described in section IV of this final rule to the FY 2018 standard payment conversion factor ($15,838), the resulting unadjusted IRF prospective payment rates for FY 2018 are shown in Table 5.

TABLE 5—FY 2018 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	$13,470.22	$11,544.32	$10,665.31	$10,191.75
0102	16,914.98	14,494.94	13,391.03	12,797.10
0103	19,125.97	16,390.75	15,141.13	14,469.60
0104	20,516.55	17,583.35	16,243.45	15,521.24
0105	23,872.62	20,459.53	18,899.49	18,061.66
0106	26,441.54	22,659.43	20,933.08	20,003.39
0107	29,522.03	25,301.21	23,373.72	22,336.33
0108	37,518.64	32,152.72	29,702.59	28,384.86
0109	33,850.56	29,010.46	26,799.48	25,610.05
0110	44,135.75	37,824.31	34,943.38	33,391.26
0201	13,520.90	10,904.46	9,928.84	9,105.27
0202	17,333.11	13,980.20	12,729.00	11,671.02
0203	20,016.06	16,142.09	14,697.66	13,478.14
0204	21,987.90	17,733.81	16,146.84	14,805.36
0205	25,842.86	20,842.81	18,977.09	17,401.21
0206	31,186.61	25,152.33	22,901.75	20,999.60
0207	39,775.55	32,079.87	29,210.02	26,783.64
0301	18,384.75	14,927.32	13,579.50	12,833.53
0302	22,330.00	18,129.76	16,493.69	15,587.76
0303	26,235.65	21,302.11	19,379.38	18,313.48
0304	34,078.62	27,668.99	25,171.33	23,788.68
0401	14,279.54	13,424.29	11,987.78	10,836.36
0402	20,435.77	19,211.49	17,154.14	15,508.57
0403	33,161.60	31,173.94	27,836.87	25,165.00
0404	58,195.15	54,706.04	48,850.73	44,162.68
0405	53,793.77	50,569.15	45,157.31	40,824.03
0501	14,749.93	11,089.77	10,511.68	9,645.34
0502	19,309.69	14,518.69	13,761.64	12,627.64
0503	24,213.13	18,205.78	17,255.50	15,834.83
0504	27,497.94	20,674.93	19,596.36	17,982.47
0505	31,512.87	23,693.65	22,456.70	20,606.82
0506	43,632.11	32,806.83	31,093.16	28,532.16
0601	16,884.89	12,904.80	11,976.70	10,894.96
0602	22,049.66	16,851.63	15,641.61	14,228.86
0603	27,040.22	20,667.01	19,181.40	17,448.72
0604	35,180.95	26,888.17	24,955.94	22,702.19
0701	16,427.17	13,142.37	12,475.59	11,363.77
0702	20,855.48	16,683.75	15,839.58	14,426.83
0703	25,187.17	20,149.10	19,129.14	17,423.38
0704	31,929.41	25,543.53	24,249.56	22,087.67
0801	13,794.90	10,164.83	9,681.77	8,938.97
0802	17,733.81	13,064.77	12,445.50	11,490.47
0803	22,988.86	16,937.16	16,134.17	14,897.22
0804	21,131.06	15,568.75	14,829.12	13,691.95

TABLE 5—FY 2018 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0805	25,057.30	18,462.36	17,584.93	16,237.12
0806	30,344.02	22,356.92	21,294.19	19,662.88
0901	15,921.94	12,793.94	11,474.63	10,668.48
0902	20,936.25	16,821.54	15,087.28	14,029.30
0903	25,693.99	20,644.83	18,516.21	17,215.91
0904	32,181.23	25,858.70	23,191.58	21,563.44
1001	16,568.13	14,289.04	12,570.62	11,474.63
1002	21,751.91	18,758.53	16,504.78	15,065.11
1003	31,858.14	27,475.76	24,171.96	22,063.92
1101	20,842.81	18,595.40	16,081.91	13,801.23
1102	30,174.56	26,921.43	23,283.44	19,979.64
1201	19,474.40	14,632.73	13,663.44	12,573.79
1202	25,035.13	18,810.79	17,564.34	16,164.26
1203	30,576.84	22,974.60	21,452.57	19,743.65
1301	19,406.30	14,646.98	13,181.97	12,643.48
1302	26,690.20	20,145.94	18,129.76	17,390.12
1303	34,799.25	26,265.74	23,638.22	22,672.10
1401	14,711.92	11,846.82	10,820.52	9,825.90
1402	19,371.46	15,598.85	14,249.45	12,938.06
1403	23,178.91	18,665.08	17,048.02	15,480.06
1404	29,363.65	23,644.55	21,598.28	19,610.61
1501	16,108.83	13,457.55	12,302.96	11,797.73
1502	20,777.87	17,356.86	15,869.68	15,215.57
1503	25,294.87	21,129.48	19,317.61	18,524.12
1504	31,332.32	26,173.88	23,929.63	22,944.51
1601	18,194.69	14,368.23	13,134.45	12,051.13
1602	24,222.64	19,129.14	17,485.15	16,043.89
1603	30,190.40	23,842.53	21,791.50	19,995.48
1701	18,961.25	14,799.03	13,313.42	12,222.18
1702	24,222.64	18,904.24	17,008.43	15,613.10
1703	28,612.93	22,331.58	20,092.09	18,443.35
1704	36,177.16	28,234.40	25,402.57	23,318.29
1801	20,228.29	15,825.33	14,034.05	12,865.21
1802	28,943.95	22,645.17	20,081.00	18,410.09
1803	45,727.47	35,776.46	31,725.10	29,084.90
1901	20,478.53	17,038.52	15,709.71	15,004.92
1902	35,313.99	29,379.49	27,087.73	25,872.96
1903	59,143.84	49,207.08	45,369.53	43,334.35
2001	14,957.41	12,106.57	11,053.34	10,038.12
2002	19,643.87	15,899.77	14,518.69	13,185.14
2003	24,439.62	19,781.66	18,061.66	16,403.42
2004	31,226.20	25,274.28	23,077.55	20,958.43
2101	28,966.12	28,885.34	21,943.55	20,405.68
5001				2,478.65
5101				10,422.99
5102				25,963.23
5103				12,879.46
5104				32,204.99

F. Example of the Methodology for Adjusting the Prospective Payment Rates

Table 6 illustrates the methodology for adjusting the federal prospective payments (as described in sections VI.A. through VI.F. of this final rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted prospective payment rate for CMG 0110 (without comorbidities) appears in Table 5.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8167, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.8859, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the prospective payment, we begin by taking the unadjusted prospective payment rate for CMG 0110 (without comorbidities) from Table 5. Then, we multiply the labor-related share for FY 2018 (70.7 percent) described in section VI.C. of this final rule by the unadjusted prospective payment rate. To determine the non-labor portion of the prospective payment rate, we subtract the labor portion of the federal payment from the unadjusted prospective payment.

To compute the wage-adjusted prospective payment, we multiply the labor portion of the federal payment by the appropriate wage index located in Tables A and B. These tables are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehab*

FacPPS/Data-Files.html. The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted federal payment by adding the wage-adjusted labor amount to the non-labor portion.

Adjusting the wage-adjusted federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 6 illustrates the components of the adjusted payment calculation.

TABLE 6—EXAMPLE OF COMPUTING THE FY 2018 IRF PROSPECTIVE PAYMENT

Steps	Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1. Unadjusted Payment	$33,391.26	$33,391.26
2. Labor Share	× 0.707	× 0.707
3. Labor Portion of Payment	= $23,607.62	= $23,607.62
4. CBSA-Based Wage Index (shown in the Addendum, Tables A and B)	× 0.8167	× 0.8859
5. Wage-Adjusted Amount	= $19,280.34	= $20,913.99
6. Non-Labor Amount	+ $9,783.64	+ $9,783.64
7. Wage-Adjusted Payment	= $29,063.98	= $30,697.63
8. Rural Adjustment	× 1.149	× 1.000
9. Wage- and Rural-Adjusted Payment	= $33,394.51	= $30,697.63
10. LIP Adjustment	× 1.0156	× 1.0454
11. Wage-, Rural- and LIP-Adjusted Payment	= $33,915.46	= $32,091.30
12. Wage- and Rural-Adjusted Payment	$33,394.51	$30,697.63
13. Teaching Status Adjustment	× 0	× 0.0784
14. Teaching Status Adjustment Amount	= $0.00	= $2,406.69
15. Wage-, Rural-, and LIP-Adjusted Payment	+ $33,915.46	+ $32,091.30
16. Total Adjusted Payment	= $33,915.46	= $34,497.99

Thus, the adjusted payment for Facility A would be $33,915.46, and the adjusted payment for Facility B would be $34,497.99.

VII. Update to Payments for High-Cost Outliers Under the IRF PPS

A. Update to the Outlier Threshold Amount for FY 2018

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2017 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, and 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2018, we proposed to use FY 2016 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41316 and 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2017. Based on an analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 3.0 percent in FY 2017. Therefore, we proposed to update the outlier threshold amount from $7,984 for FY 2017 to $8,656 for FY 2018 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2018.

We note that, as we typically do, we updated our data between the FY 2018 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments. This updated data includes a more complete set of claims for FY 2016. Based on our analysis using this updated data, we now estimate that IRF outlier payments as a percentage of total estimated payments are approximately 3.1 percent in FY 2017. In addition, we stated that we still need to adjust the IRF outlier threshold to reflect changes in estimated costs and payments for IRFs in FY 2018. That is, as discussed previously in this final rule, we are increasing IRF PPS payment rates by 1.0 percent, in accordance with section 1886(j)(3)(C)(iii) of the Act. Similarly,

IRF estimated costs for FY 2018 are expected to increase. Therefore, we will update the outlier threshold amount from $7,984 for FY 2017 to $8,679 for FY 2018 to account for the increases in IRF PPS payments and estimated costs and to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2018.

We received 4 public comments on the proposed update to the FY 2018 outlier threshold amount to maintain estimated outlier payments at approximately 3 percent of total estimated IRF payments, which are summarized below.

Comment: Some commenters were supportive of maintaining estimated payments for outlier payments at approximately 3 percent and requested that CMS update the outlier threshold amount in the final rule using the latest available data. One commenter reiterated their recommendation to expand the outlier pool from 3 to 5 percent to redistribute payments within the IRF PPS and to reduce the impact of misalignments between IRF payments and costs. Specifically, the commenter suggested that expanding the outlier pool would help to ameliorate the financial burden on IRFs that have a relatively high share of costly cases. However, this same commenter noted that such an expansion in the outlier pool could inappropriately reward some facilities for inefficiencies. Another commenter suggested that CMS should lower the outlier pool below 3 percent.

Response: We agree that we should use the most recent data available to calculate the outlier threshold. Therefore, as previously stated, we updated the data used to calculate the outlier threshold between the FY 2018 IRF PPS proposed and final rule.

We refer readers to the 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), for a discussion of the rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases. We continue to believe that the outlier policy of 3 percent of total estimated aggregate payments accomplishes this objective. Increasing the outlier pool would leave less money available to cover the costs of non-outlier cases, due to the fact that we would implement such a change in a budget-neutral manner. We believe that our current outlier policy, to set outlier payments at 3 percent of total estimated aggregate payments, is consistent with the statute and the goals of the IRF PPS.

Comment: Several commenters suggested that CMS should modify the methodology for determining the outlier threshold so that the full 3 percent outlier pool is paid out to providers, as they indicated that CMS has paid out less than the estimated 3 percent for each of the past several years. Some commenters suggested implementing a forecast error correction if the full amount of the outlier pool is not paid out.

Response: We appreciate the commenters' analyses and suggestions regarding the outlier threshold calculations. As previously noted, we updated our data between the FY 2018 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments. Based on our analysis using this updated data, we now estimate that IRF outlier payments as a percentage of total estimated aggregate payments are approximately 3.1 percent in FY 2017, thus indicating that we paid out more than 3 percent, not less, in this most recent fiscal year.

We will continue to monitor our IRF outlier policies to ensure that they continue to compensate IRFs appropriately for treating unusually high-cost patients and do not limit access to care for patients who are likely to require unusually high-cost care. As we most recently noted in the FY 2017 IRF PPS final rule (81 FR 52079), we do not make adjustments to IRF PPS payment rates for the sole purpose of accounting for differences between projected and actual outlier payments. We use the best available data at the time to establish an outlier threshold for IRF PPS payments prior to the beginning of each fiscal year to help ensure that estimated outlier payments for that fiscal year will equal 3 percent of total estimated IRF PPS payments. We analyze expenditures annually, and if there is a difference from our projection, that information is used to make a prospective adjustment to lower or raise the outlier threshold for the upcoming fiscal year. We believe a retrospective adjustment would not be appropriate to recoup or make excess payments to hospitals.

If outlier payments for a given year turn out to be greater than projected, we do not recoup money from hospitals; if outlier payments for a given year are lower than projected, we do not make an adjustment to account for the difference. Payments for a given discharge in a given fiscal year are generally intended to reflect or address the prospective average costs of that discharge in that year; that goal would be undermined if we adjusted IRF PPS payments to account for ''underpayments'' or ''overpayments'' in IRF outliers in previous years.

Comment: Several commenters suggested that we consider implementing a cap on the amount of outlier payments an individual IRF can receive under the IRF PPS to ensure that outliers are fairly distributed.

Response: As we did not propose to implement a cap on the amount of outlier payments an individual IRF can receive under the IRF PPS, these comments are outside the scope of this rule. However, any future consideration given to imposing a limit on outlier payments would have to carefully analyze and take into consideration the effect on access to IRF care for certain high-cost populations.

Final Decision: Having carefully considered the public comments received and also taking into account the most recent available data, we are finalizing the outlier threshold amount of $8,679 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2018.

B. Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages

Cost-to-charge ratios are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from Medicare cost reports. IRF specific cost-to-charge ratios are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF prospective payment system. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we proposed to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we proposed to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2017, based on analysis of the most recent data that is available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2018, as discussed below in this section.

• Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2018, we proposed to estimate a national average CCR of 0.516 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we proposed to estimate a national average CCR of 0.416 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this final rule, we have used the most recent available cost report data (FY 2015). This includes all IRFs whose cost reporting periods begin on or after October 1, 2014, and before October 1, 2015. If, for any IRF, the FY 2015 cost report was missing or had an ''as submitted'' status, we used data from a previous fiscal year's (that is, FY 2004 through FY 2014) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2015 cost report data for this final rule, we estimate a national average CCR of 0.518 for rural IRFs, and a national average CCR of 0.416 for urban IRFs.

In accordance with past practice, we proposed to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we proposed a national CCR ceiling of 1.28 for FY 2018. This means that, if an individual IRF's CCR were to exceed this proposed ceiling of 1.28 for FY 2018, we would replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

Using the updated FY 2015 cost report data for this final rule, we estimate a national average CCR ceiling of 1.31, using the same methodology.

We did not receive any comments on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2018.

Final Decision: As we did not receive any comments on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2018, we are finalizing the national average urban CCR at 0.416, the national average rural CCR at 0.518, and the national CCR ceiling at 1.31 for FY 2018.

VIII. Removal of the 25 Percent Payment Penalty for IRF–PAI Late Submissions

Under section 1886(j)(2)(D) of the Act, the Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the IRF PPS. The timely collection of patient data is indispensable for the successful operation of the IRF PPS. A comprehensive, reliable system for collecting standardized patient assessment data is necessary to assign beneficiaries to the appropriate CMGs, to monitor the effects of the IRF PPS on patient care and outcomes, and to determine whether adjustments to the CMGs are warranted.

In the FY 2002 IRF PPS final rule (66 FR 41316), we implemented the IRF–PAI data collection instrument, through which IRFs are required to collect and electronically submit patient data for all Medicare Part A FFS patients. IRFs are required to submit their IRF–PAI to CMS through its contractor, currently the CMS National Assessment Collection Database, in accordance with the requirements in §§ 412.610(c)(2)(i)(B), 412.610(d), and 412.614(c). To encourage timely filling, the requirement at § 412.614(d)(1)(ii) provides that failure to submit the IRF–PAI on Medicare Part A FFS patients within the required deadline would result in the imposition of a 25 percent payment penalty.

The FY 2010 IRF PPS final rule (74 FR 39798 through 39800) expanded collection of IRF–PAI data to Medicare Part C (Medicare Advantage) IRF patients. IRFs that failed to timely submit IRF–PAIs on their Part C patients would forfeit their ability to have any of their Part C data used in the calculations for determining their eligibility for exclusion under § 412.23(b). We did not propose any changes to the Medicare Part C IRF–PAI submission requirements or the consequences of failure to submit complete and timely IRF–PAI data for Medicare Part C (Medicare Advantage) patients in the proposed rule.

Effective October 1, 2012, we issued a change request (CR 7760) that created a new edit within the Fiscal Intermediary Shared System (FISS) for IRF PPS claim submissions. In the event that an IRF attempts to submit a Medicare Part A FFS claim for a patient, and there is not a corresponding IRF–PAI for the patient on file to match the claim with, the FISS edit will return an error to the IRF provider advising that an IRF–PAI needs to be submitted. Since IRFs can now only receive payment from Medicare for a Medicare Part A FFS patient when both an IRF claim and an IRF–PAI are submitted and matched accordingly, we believe that they will be financially motivated to file a patient's claim and the patient's corresponding IRF–PAI in a timely manner. Therefore, we believe that the 25 percent payment penalty for late transmission of the IRF–PAI is no longer needed to encourage providers to submit data to CMS.

Furthermore, we believe that the 25 percent payment penalty is no longer necessary, and we also believe it is placing an unnecessary burden on IRFs when they need to apply for a waiver from the penalty. Section 412.614(e) enables CMS to waive the 25 percent payment penalty in extraordinary situations that are beyond the control of the IRF. These include, but are not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient facility as well as situations in which data transmission issues beyond the control of the IRF have made it impossible for the IRF to submit IRF–PAIs in the required timeframe. In such instances, IRFs have generally filed waiver requests under the waiver provision. We review each waiver request on a case-by-case basis and have found that the vast majority of the requests that we received since October 2012 met the waiver criteria. In such cases, the penalty is waived per § 412.614(e), the claim is reprocessed, and the IRF is paid for the claim in full. Of the approximately 10,000 fee-for-service IRF–PAIs that we estimate (based on FY 2015 data) are transmitted late each year, amounting to a total payment penalty of approximately $37.6 million per year, the vast majority qualify for a

waiver under § 412.614(e). Thus, based on our review of our records, we have found that the vast majority of these cases incurred the expenses of the IRF requesting a waiver, CMS reviewing the waiver request, and CMS reprocessing the applicable claims. Without the 25 percent payment penalty, this process, where the vast majority of cases ultimately meet the waiver criteria, would also no longer by necessary. Therefore, in the FY 2018 IRF PPS proposed rule (82 FR 20706 through 20707), we proposed to remove the 25 percent payment penalty for late IRF–PAI transmissions.

We did not propose any changes to the timely filing requirements at § 412.614(c). However, we did propose to remove the payment penalty by revising the following regulations that pertain to the application of the 25 percent payment penalty for late transmission of the IRF–PAI effective for all discharges beginning on or after October 1, 2017.

- Revise § 412.614(d) Consequences of failure to submit complete and timely IRF–PAI data.
- Revise § 412.614 (d)(1).
- Revise § 412.614(d)(1)(i)
- Revise § 412.614(d)(1)(ii).
- Revise § 412.614(e) Exemption to the consequences for transmitting the IRF–PAI data late.

We received 16 comments on the proposed removal of the 25 percent payment penalty for late IRF–PAI transmissions, which are summarized below.

Comment: All comments that we received regarding the proposed removal of the 25 percent payment penalty were supportive. The commenters agreed with our assessment that IRFs already have sufficient incentive to submit the IRF–PAI in a timely manner because it is required for IRF payment. Some of the commenters also stated that they agreed with our proposal, because it would decrease the administrative burden placed on providers needing to request a waiver.

Response: We appreciate the support from the commenters regarding the removal of the 25 percent payment penalty.

Final Decision: After careful consideration of the comments we received, we are finalizing our proposal to remove the 25 percent payment penalty for late IRF–PAI transmissions, including our proposed revisions to the regulation text that pertain to the application of the 25 percent payment penalty for late transmission of the IRF–PAI, effective for all IRF discharges beginning on and after October 1, 2017.

IX. Removal of the Voluntary Item 27 (Swallowing Status) From the IRF–PAI

In the FY 2014 IRF PPS final rule (78 FR 47896 through 47897), we removed the voluntary Items 25, 26, and 28 from the IRF–PAI. We chose not to remove the voluntary Item 27: Swallowing status, from the IRF–PAI at the time because we believed that it was an integral part of the patient's IRF care and should continue to be evaluated and monitored. However, in the FY 2016 IRF PPS final rule (80 FR 47113 through 47117), we revised the IRF–PAI to include Section K—Swallowing/Nutritional Status, as a risk adjustor for the functional outcome measures. We believe that this new quality item captures very similar data as Item 27. Thus, in the FY 2018 IRF PPS proposed rule (82 FR 20707), we proposed to remove this item from the IRF–PAI for all IRF discharges beginning on or after October 1, 2017, as we no longer believe that this item is necessary.

We received 10 comments on the proposed removal of Item 27 from the IRF–PAI for all discharges beginning on or after October 1, 2017, which are summarized below.

Comment: Overall, the majority of commenters supported the removal of this voluntary item from the IRF–PAI, in order to reduce the burden of data collection and reporting of a duplicate item.

Response: We appreciate the support from the commenters regarding the removal of this voluntary item from the IRF–PAI. We believe this change will further reduce unnecessary provider burden as this item is duplicative since the new quality item on the IRF–PAI, Section K—Swallowing/Nutritional Status, captures very similar data.

Comment: One commenter did not support the proposed removal of Item 27 from the IRF–PAI stating that, as a voluntarily reported item, Item 27 is not burdensome. The commenter also stated that only Item 27 tracks patients' feeding modalities at both admission and discharge and thereby captures information on a patient's improvement through the course of their IRF stay. Lastly, the commenter suggested that we retain Item 27 until October 1, 2018 when IRF–PAI version 2.0 is implemented, adding Item K0520—Nutritional Approaches to admission and discharge assessment (if adopted as proposed).

Response: We respectfully disagree with this commenter and continue to believe that removing the voluntary Item 27 from the IRF–PAI is appropriate because it is duplicative with the new quality item on the IRF–PAI, Section K—Swallowing/Nutritional Status, and is burdensome for providers to complete. Additionally, we believe that if an IRF provider has supplementary information pertaining to a patient's swallowing status beyond completing Section K—Swallowing/Nutritional Status, it will be thoroughly documented in the patient's medical record.

Final Decision: Upon careful consideration of the comments we received we are finalizing our proposal to remove voluntary Item 27: Swallowing status from the IRF–PAI, effective for all IRF discharges beginning on or after October 1, 2017.

X. Refinements to the Presumptive Compliance Methodology ICD–10–CM Diagnosis Codes

A. Background on the IRF 60 Percent Rule

The compliance percentage has been part of the criteria for defining IRFs since implementation of the IPPS in 1983. In the FY 2015 IRF PPS final rule (79 FR 45872, 45891 through 45892), we discussed the development of the compliance percentage or the ''60 percent rule.'' We refer readers to that discussion for background on the 60 percent rule and the IRF PPS.

B. Enforcement of the IRF 60 Percent Rule

As described in detail in Chapter 3, section 140.1.3 of the Medicare Claims Processing Manual (Pub. 100–04), which is located on the Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html,* the MACs evaluate IRFs' compliance with the 60 percent rule policies annually, using two different methods. One of these methods is called the presumptive compliance method, and the other method is called the medical review method.

1. Presumptive Compliance Method

The presumptive compliance method is typically the first method MACs use to evaluate an IRF's compliance with the 60 percent rule. To use the presumptive compliance method, an IRF must first demonstrate that it treats a patient population that consists of at least 50 percent Medicare FFS or MA patients. If it cannot meet this requirement, then the MAC is required to evaluate the IRF's compliance using the medical review method (described below in this section).

The presumptive compliance method relies on a computerized algorithm that compares lists of diagnosis codes with

the diagnosis codes that IRFs report on patients' IRF–PAIs. First, the computer algorithm compares the impairment group codes (IGCs), which represent the primary reason the patient is being treated in the IRF, with the list of IGCs that presumptively meets the 60 percent rule requirements (which can be downloaded from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html*). If the computer algorithm finds a match, then the computer algorithm examines further to determine whether there are any etiologic diagnosis exclusions on the list that match with any etiologic diagnosis codes (ICD–10–CM codes in item #22 of the IRF–PAI). If the IGC on the IRF–PAI matches an IGC that presumptively meets the 60 percent rule requirements, and there are no etiologic diagnosis exclusions (or there are no matches with the etiologic diagnoses on the IRF–PAI), then the case is counted as meeting the requirements. If the IGC on the IRF–PAI matches one of the presumptive IGCs, but there is an etiologic diagnosis exclusion that matches one of the etiologic diagnoses on the IRF–PAI, then the case is not counted as meeting the requirements. If the IGC on the IRF–PAI does not match one of the presumptive IGCs, then the computer algorithm goes a further step to examine the comorbid conditions listed in item #24 on the IRF–PAI. If, in this second step, one or more comorbid conditions listed in item #24 match one of the ICD–10–CM diagnosis codes (or code combinations) listed on the presumptive compliance list (which can also be downloaded from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html*), then the case is counted as presumptively meeting the 60 percent rule requirements. Otherwise, the case is not counted as meeting the requirements.

2. Medical Review Method

The medical review method of determining an IRF's compliance with the 60 percent rule requirements must be used if the IRF's Medicare FFS and MA population makes up less than 50 percent of its total patient population, or for some reason the MAC is unable to generate a valid compliance percentage for the IRF using the presumptive compliance method, or the IRF fails to meet the 60 percent rule requirements using the presumptive compliance method. However, the MAC is always permitted to use the medical review method for an IRF if the MAC determines that this method will result in the most accurate portrayal of the IRF's compliance with the 60 percent rule requirements.

Under the medical review method, the MAC takes a statistically valid random sample of an IRF's claims for the 12-month compliance review period, and requests the complete medical records for this sample of claims from the IRF. The MAC then reviews this sample of medical records to determine whether the IRF is in compliance with the 60 percent rule requirements.

Thus, if an IRF fails to meet the requirements according to the presumptive compliance method, the MAC must always perform the medical review method to determine whether the IRF has met the requirements. An IRF cannot fail to meet the requirements based solely on the outcome of the presumptive compliance method.

C. Background on the Use of ICD–10–CM Diagnosis Codes in the Presumptive Compliance Method

We developed the presumptive compliance method to simplify the process of determining whether an IRF meets the 60 percent rule requirements. By using a computerized algorithm that looks for diagnosis codes on the IRF–PAI and attempts to match them to diagnosis codes on the lists of codes that presumptively meet the requirements, the presumptive compliance method can be performed quickly and efficiently. However, in order to accurately reflect whether an IRF meets the 60 percent rule requirements using the presumptive compliance method, we must ensure that the lists of diagnosis codes (IGCs, etiologic diagnosis exclusions, and comorbid condition codes) that are used in the presumptive compliance method are accurate and updated. That is, we must ensure that each code used in the presumptive compliance method, if applicable to a given patient, would more than likely mean that the patient required intensive rehabilitation services in an IRF for treatment of one or more of the conditions specified at § 412.29(b)(2) or that they had a comorbidity that caused significant decline in functional ability such that, even in the absence of the admitting condition, the patient would require the intensive rehabilitation treatment.

To ensure that the diagnosis codes used in the presumptive compliance method were accurately reflecting this, in the FY 2014 IRF PPS final rule (78 FR 47860, 47879 through 47895), we implemented the first updates and revisions in nearly a decade to the list of International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) codes then used in determining presumptive compliance with the 60 percent rule when we revised the Presumptive Methodology list (then, ''ICD–9–CM Codes That Meet Presumptive Compliance Criteria''). At the time, our examination found that changes over time (including changes in the use of the individual codes, changes in clinical practice, changes in the frequency of various types of illness and disability, and changes to the application of 60 percent rule itself) supported our updating the diagnosis codes that are deemed appropriate to count toward a facility's 60 percent rule compliance calculation. Such updates ensured that the codes better reflected the regulations at § 412.29(b). We performed a clinical analysis of the ICD–9–CM Presumptive Methodology code list to determine the clinical appropriateness of each individual ICD–9–CM code's inclusion on the list, and a statistical analysis of the ICD–9–CM diagnoses code list to enhance our understanding of how individual ICD–9–CM codes were being used by IRFs. For example, one revision we made was to remove non-specific codes where we believed more specific codes were available for coding. These changes were in line with our overall goal to encourage more specific coding on the IRF–PAI.

As a follow up to the revisions we implemented in the FY 2014 IRF PPS final rule, in the FY 2015 IRF PPS final rule (79 FR 45872, 45896 through 45900), we revised the ICD–9–CM diagnosis codes on the ''IGCs That Meet Presumptive Compliance Criteria'' list. An ''impairment group code'' is not an ICD diagnosis code, but part of a separate unique set of codes specifically developed for the IRF PPS for assigning the primary reason for admission to an IRF. Our objective in revising the list was to make conforming changes to the IGC list that we had made to the Presumptive Methodology list in the FY 2014 IRF PPS final rule. We also revised the diagnosis codes listed as exclusions on the ''IGCs That Meet Presumptive Compliance Criteria'' list. In the IRF PPS, we exclude these diagnosis codes from counting if they are the patient's Etiologic Diagnosis (that is, the etiologic problem that led to the condition for which the patient is receiving rehabilitation). That is, a given IGC that would otherwise meet the presumptive compliance criteria will not meet such criteria if the patient has one of the ''excluded'' Etiologic Diagnoses for that IGC.

In the FY 2015 IRF PPS final rule (79 FR 45872, 45905 through 45908), we

also finalized our translation of the diagnosis code lists from ICD–9–CM to ICD–10–CM, effective for use when ICD–10 would become the required medical code data set for use on Medicare claims and IRF–PAI submissions (which occurred on October 1, 2015). As discussed in that rule, we translated the ICD–9–CM code lists used in the IRF PPS presumptive compliance methodology into ICD–10–CM using the General Equivalence Mappings (GEMs) tool. Our intention was to perform a straightforward translation of these codes from ICD–9–CM to ICD–10–CM using the GEMs tool. That is, we made no policy or clinical analysis of the codes under their ICD–10–CM code definition or label, but merely registered the ICD–10 diagnosis codes generated through the GEMS tool. Our intention in converting the ICD–9–CM diagnosis codes to ICD–10–CM diagnosis codes was for the converted codes to reflect the same ''meaning'' as the original codes. That is, we did not intend to add conditions to, or remove conditions from, the ICD–9–CM codes used in the IRF PPS at that time.

To ensure a smooth transition from the use of ICD–9–CM diagnosis codes to ICD–10–CM codes for the IRF PPS and to allow for public comment on these lists, we proposed and posted to the CMS Web site the resulting ICD–10–CM lists. After carefully considering the comments that we received on our proposed translation of the ICD–9–CM code lists into ICD–10–CM using the GEMs tool, we finalized the ICD–10–CM lists in the FY 2015 IRF PPS final rule. The current ICD–10–CM lists are available for download from the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

We stated in the FY 2014 and FY 2015 final rules that, after the adoption of the ICD–10 medical code set, we would review the lists in ICD–10 (once we had enough ICD–10 data available) and make any necessary changes to the lists.

D. Changes to the Presumptive Methodology Diagnosis Code List

Over the past year, we have performed a comprehensive analysis of the presumptive methodology diagnosis code lists in ICD–10–CM. Overall, our analysis shows that the process we implemented for updating, revising, and converting the ICD–9–CM diagnosis codes to ICD–10–CM (in the FY 2014 and FY 2015 final rules) worked as intended. However, our analysis indicates that there are areas for improvement. Though we did not propose any specific proposals for changes to the presumptive methodology diagnosis code lists in ICD–10–CM or the presumptive compliance criteria in the FY 2017 IRF PPS proposed rule (81 FR 24178), we received several miscellaneous public comments on the ICD–10–CM diagnosis codes, some of which we summarized in the FY 2017 IRF PPS final rule (81 FR 52132). Our analysis and the public comments show the following areas for improvement:

- Issues with ICD–10–CM diagnosis codes that were added to the list of IGC exclusions through the ICD–9–CM to ICD–10–CM conversion process for patients with traumatic brain injury conditions and hip fracture conditions.
- Issues with identification of major multiple trauma codes that did not translate exactly from ICD–9–CM to ICD–10–CM.
- Issues with certain non-specific and arthritis diagnosis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process.
- One ICD–10–CM code, G72.89—Other specified myopathies, that we believe may currently be inappropriately applied.

Thus, to ensure that the ICD–10–CM diagnosis code lists reflect as accurately as possible the relevant conditions that we believe should count presumptively toward the 60 percent rule, we proposed revisions to the codes on the list. The proposed revisions were designed to maximize the extent to which the presumptive methodology is in alignment with the 60 percent rule in § 412.29(b), the policies that we finalized in the FY 2014 and FY 2015 IRF PPS final rules (78 FR 47860 and 79 FR 45872, respectively), and the ICD–10–CM coding guidelines, ''ICD–10–CM Official Guidelines for Coding and Reporting.'' CMS and the National Center for Health Statistics (NCHS) provide the guidelines for coding and reporting using ICD–10–CM. The current ICD–10–CM coding guidelines are located on the CMS Web site at *https://www.cms.gov/medicare/coding/icd10/2017-icd-10-cm-and-gems.html.*

E. Revisions Involving Traumatic Brain Injury and Hip Fracture Codes

Our comprehensive review of the ICD–10–CM code lists for the presumptive methodology showed that excluded diagnosis codes listed in two IGC categories were affected by the ICD–10–CM translation: Traumatic brain injury (TBI) and hip fracture(s).

The excluded diagnosis codes on the IGC list fall into the following IGC categories:

- Brain Dysfunction—0002.21 Traumatic, Open Injury
- Brain Dysfunction—0002.22 Traumatic, Closed Injury
- Orthopedic Disorders—0008.11 Status Post Unilateral Hip Fracture
- Orthopedic Disorders—0008.12 Status Post Bilateral Hip Fractures

1. Traumatic Brain Injury Code Exclusions on the IGC List

We used the GEMs tool purely to translate the ICD–9–CM diagnosis codes used in the presumptive compliance methodology lists to ICD–10–CM diagnosis code lists. We intended the breadth of conditions covered in the former would be equivalent to the latter. However, under ICD–10–CM, the code labels for certain etiologic diagnoses for traumatic brain injuries changed from the meaning of the diagnosis codes for traumatic brain injuries under ICD–9–CM. Thus, for the proposed rule, we analyzed the ICD–10–CM traumatic brain injury diagnosis codes listed as exclusions on the IGC list based on the ICD–10–CM code labels (diagnosis descriptions). Based on that analysis, we proposed to remove some of the traumatic brain injury codes listed as exclusions on the IGC list (that is, if listed as an Etiologic Diagnosis on the IRF–PAI, these diagnosis codes would count toward the presumptive compliance criteria). However, we proposed to retain S06.9X9A—Unspecified intracranial injury with loss of consciousness of unspecified duration, initial encounter as an excluded code under ''IGC Brain Dysfunction—0002.22 Traumatic, Closed Injury'' as part of an excluded combination diagnosis code (meaning that one code contains more than one diagnosis) because we believe other, more specific codes are available on the presumptive compliance list that would be more appropriate for coding conditions suitable for inclusion in the presumptive compliance count for a facility.

2. Hip Fracture(s) Code Exclusions on the IGC List

In the FY 2014 IRF PPS final rule (78 FR 47860, 47894), we removed ICD–9–CM diagnosis codes 820.8—Closed fracture of unspecified part of neck of femur, and 820.9—Open fracture of unspecified part of neck of femur, from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list. In the FY 2015 IRF PPS final rule (79 FR 45872, 45897), we excluded these diagnosis codes from counting if they are the patient's Etiologic Diagnosis (that is, the etiologic problem that led to the condition for which the patient is receiving rehabilitation) under IGC 0008.11—Orthopedic Disorders-Status

Post Unilateral Hip Fracture, and IGC 0008.12—Orthopedic Disorders-Status Post Bilateral Hip Fractures. Also, in the FY 2015 IRF PPS final rule (79 FR 45872, 458905 through 45908), we adopted the ICD–10 medical code set for the IRF PPS, in which we translated these ICD–9–CM diagnosis codes to ICD–10–CM diagnosis codes.

For the proposed rule, we reviewed the IGC ICD–10–CM diagnosis code exclusions under IGC 0008.11 and IGC 0008.12. After a thorough review of the codes listed as exclusions under these IGCs, we proposed to remove some of the exclusion codes for these two IGCs, to allow them to count under the presumptive compliance methodology. In the FY 2014 IRF PPS final rule (78 FR 47860, 47885), we agreed with commenters that treatment for a femoral neck fracture is the same regardless of the level of the fracture line within the capsule of the hip or the trochanteric region. During the ICD–10–CM conversion, some hip fracture codes were inadvertently added as exclusions to IGC 0008.11—Orthopedic Disorders-Status Post Unilateral Hip Fracture, and IGC 0008.12—Orthopedic Disorders-Status Post Bilateral Hip Fractures. Consistent with our decision described in the FY 2014 IRF PPS final rule, we proposed to remove the diagnosis code exclusions for a fracture of ''*unspecified* part of neck of femur.'' However, we proposed to retain the diagnosis code exclusions with the code label, ''fracture of unspecified part of neck of *unspecified femur*'' because we believe that documentation should support which femur (left/right or bilateral) is injured.

In Table 1—ICD–10–CM Excluded Codes Removed From IGC List, we list the TBI and hip fracture diagnosis code exclusions removed from the IGC list (that is, if listed as an Etiologic Diagnosis on the IRF–PAI, these diagnosis codes would count toward the presumptive compliance criteria).

Table 1 is available for download on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip*.

We received 18 public comments on our proposed revisions involving TBI and hip fracture codes, which are summarized below.

Comment: Several commenters stated that they appreciated that CMS had performed a comprehensive analysis of the presumptive methodology diagnosis code lists in ICD–10–CM for TBI and hip fracture conditions and that CMS seemed to listen to IRF services providers' concerns.

Response: We appreciate the commenters' support for our proposed revisions involving TBI and hip fracture codes.

Comment: Several commenters stated that S06.9X9A—Unspecified intracranial injury with loss of consciousness of unspecified duration, initial encounter should not be listed as an exclusion on the IGC list. These commenters expressed concerns that the information to code the specific cause of a patient's injury and the duration of a patient's loss of consciousness is often unavailable to the IRF because it is not in the records from the transferring facility (for example, an acute care hospital) and the IRF is unable administratively or clinically to retrieve this information. Several commenters also noted that the clinical treatment of patients is not necessarily affected by whether or not the IRF can determine the exact cause of the patient's injury or the duration of the patient's loss of consciousness. Thus, commenters expressed concerns that the IRF would, in effect, be unfairly ''penalized'' in that it would have a more difficult time meeting the 60 percent rule requirements under the presumptive methodology if it is unable to obtain the necessary information to code more specifically.

Response: We recognize that the IRF builds its understanding of its patients that are admitted to the IRF from the acute care hospital in part from the acute care medical record, and that very rarely the information needed to code a more specific diagnosis is not available in that record. However, as a required part of the IRF's admission process (in accordance with the regulations at § 412.622(a)(4)(i)), the IRF must perform a comprehensive preadmission screening on each Medicare Part A fee-for-service patient. To meet the requirements of the comprehensive preadmission screening, the IRF clinical staff may, on rare occasions, need to consult diagnostic reports, radiological reports, and consultation notes, among other informational documentation. This information should provide the IRF clinicians enough of a clinical basis for determining a more specific diagnosis code for the patient. As stated in the proposed rule, we believe other more specific codes are available, such as those codes listed under subcategory S06.89-, Other specified intracranial injury. We believe that the IRF should make every effort to obtain the necessary information to code more specifically. Thus, we will retain S06.9X9A as an excluded code under IGC 0002.22—Brain Dysfunction, Traumatic, Closed Injury, and continue to review the presumptive compliance methodology code lists to ensure that the ICD–10–CM codes on the lists reflect as accurately as possible the conditions listed in § 412.29(b)(2).

Comment: Several commenters expressed concerns that the following ICD–10–CM codes were listed as exclusions on the draft IGC list posted to the CMS Web site contemporaneously with the proposed rule under IGC 0002.21—Brain Dysfunction, Traumatic, Open Injury and IGC 0002.22—Brain Dysfunction Traumatic, Closed Injury:

- S02.101B—Fracture of base of skull, right side, initial encounter for open fracture;
- S02.102B—Fracture of base of skull, left side, initial encounter for open fracture;
- S02.101A—Fracture of base of skull, right side, initial encounter for closed fracture;
- S02.102A—Fracture of base of skull, left side, initial encounter for closed fracture.

These commenters suggested that we should remove these ICD–10–CM codes as exclusions from the IGC list under IGC 0002.21—Brain Dysfunction, Traumatic, Open Injury and IGC 0002.22—Brain Dysfunction Traumatic, Closed Injury (thereby allowing these codes to count toward the presumptive compliance criteria) because these codes conform with ICD–10–CM coding guidelines, reflect serious injuries, and are representative of the types of conditions that fall under the 60 percent rule.

Response: Diagnosis codes S02.10XA—Unspecified fracture of base of skull, initial encounter for closed fracture and S02.10XB—Unspecified fracture of base of skull, initial encounter for open fracture were listed as excluded diagnosis codes on the IGC list prior to medical code data set updates. However, with the updates to the ICD–10–CM medical data code set (for ICD–10–CM coding updates see *https://www.cms.gov/Medicare/Coding/ICD10/2018-ICD-10-PCS-and-GEMs.html* and *https://www.cms.gov/Medicare/Coding/ICD10/2017-ICD-10-PCS-and-GEMs.html*), S02.10XA—Unspecified fracture of base of skull, initial encounter for closed fracture and S02.10XB—Unspecified fracture of base of skull, initial encounter for open fracture were removed from the ICD–10–CM medical code data set. These codes were replaced with the added codes: S02.101B—Fracture of base of skull, right side, initial encounter for open fracture; S02.102B—Fracture of base of skull, left side, initial encounter for open fracture; S02.101A—Fracture of

base of skull, right side, initial encounter for closed fracture; and S02.102A—Fracture of base of skull, left side, initial encounter for closed fracture. On the draft IGC list posted to the CMS Web site contemporaneously with the proposed rule, we retained the combination code exclusions that included these new added codes (that is, if listed as an Etiologic Diagnosis on the IRF–PAI, these diagnosis codes would not count toward the presumptive compliance criteria). In consideration of the comments and in light of the recent update to the ICD–10–CM medical code data set, we agree with the commenters that these codes indicate serious injuries and are representative of the conditions that are listed in 42 CFR 412.29(b)(2) as meeting the 60 percent rule criteria. Moreover, these codes provide more specificity than the prior codes S02.10XA and S02.10XB because they indicate the anatomic location of the injury. Accordingly, we are removing the combination code exclusions on the IGC list that contain S02.101B—Fracture of base of skull, right side, initial encounter for open fracture; S02.102B—Fracture of base of skull, left side, initial encounter for open fracture; S02.101A—Fracture of base of skull, right side, initial encounter for closed fracture; and S02.102A—Fracture of base of skull, left side, initial encounter for closed fracture from the IGC exclusion list (thereby allowing these codes to count toward the presumptive compliance criteria).

Comment: Commenters generally agreed with the proposed removal of the diagnosis code exclusions for a fracture of ''*unspecified* part of neck of femur'' from the IGC list for unilateral and bilateral hip fracture(s). However, one commenter stated that code exclusions with the code label, ''fracture of unspecified part of neck of *unspecified femur*'' should be retained on the list as the patient record should identify the right or left femur.

Response: As discussed, we are removing the diagnosis code exclusions for a fracture of ''*unspecified* part of neck of femur'' consistent with our decision in the FY 2014 IRF PPS final rule. However, we will retain the 3 code exclusions for S72.009-, Fracture of unspecified part of neck of *unspecified femur,* as we continue to review the presumptive compliance methodology code lists to ensure that the ICD–10–CM codes on the lists reflect as accurately as possible the conditions listed in § 412.29(b)(2). We agree with the commenter that there should be sufficient documentation in the patient's medical record in order to appropriately code whether the location of the fracture affects the right or left femur.

Final Decision: After carefully considering the comments we received on our proposed revisions involving TBI and hip fracture codes, we are modifying our proposal, based on our own reassessment of the code exclusions and on commenters' suggestions. That is, we are finalizing the proposed revisions involving TBI and hip fracture codes for IGCs 0002.21, 0002.22, 0008.11, and 0008.12, with the additional removal of the following ICD–10–CM codes from the list of ''Impairment Group Codes that Meet Presumptive Compliance Criteria'' (allowing these codes to count toward the presumptive methodology):

- S02.101B—Fracture of base of skull, right side, initial encounter for open fracture;
- S02.102B—Fracture of base of skull, left side, initial encounter for open fracture;
- S02.101A—Fracture of base of skull, right side, initial encounter for closed fracture; and
- S02.102A—Fracture of base of skull, left side, initial encounter for closed fracture.

In addition, we are finalizing our proposals to retain S06.9X9A—Unspecified intracranial injury with loss of consciousness of unspecified duration, initial encounter as an excluded code under IGC 0002.22—Brain Dysfunction, Traumatic, Closed Injury. We are also finalizing our proposal to retain the diagnosis code exclusions with the code label, ''fracture of unspecified part of neck of unspecified femur'', specifically the 3 code exclusions for S72.009-, Fracture of unspecified park of neck of unspecified femur.

These changes are effective for IRF discharges occurring on and after October 1, 2017. The revised IGC list is available for download from the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

F. Revisions Regarding Major Multiple Trauma Codes

Under ICD–9–CM, diagnosis codes 828.0—Closed multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, and 828.1—Open multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, would count a case as meeting the 60 percent rule requirements under the presumptive compliance method. However, similar codes do not exist in ICD–10–CM. The GEMs tool translates these ICD–9–CM codes to the ICD–10–CM code of T07—Unspecified multiple injuries. IRF providers have communicated to CMS their understanding that they would be violating *ICD–10–CM Official Guidelines for Coding and Reporting* if they were to use code T07 for patients with multiple fractures, unless they truly do not know where any of the patient's fractures are located. The IRFs stated that *ICD–10–CM Official Guidelines for Coding and Reporting* indicates that codes for specific bones fractured should be reported. As such, providers state that they no longer are able to code for these patients in a manner that allows them to count under presumptive compliance. The ICD–10–CM Official Guidelines for Coding and Reporting is located on the CMS Web site at *https://www.cms.gov/medicare/coding/icd10/2017-icd-10-cm-and-gems.html.*

Under the IRF PPS, the GEMs translation provides the following ICD–10–CM combination codes as eligible codes for multiple trauma cases:

S42.90XA A Fracture of unspecified shoulder girdle, part unspecified, initial encounter for closed fracture
S52.90XA A Unspecified fracture of unspecified forearm, initial encounter for closed fracture
S22.20XA B Unspecified fracture of sternum, initial encounter for closed fracture
S22.49XA C Multiple fractures of ribs, unspecified side, initial encounter for closed fracture
S42.91XA A Fracture of right shoulder girdle, part unspecified, initial encounter for closed fracture
S52.91XA A Unspecified fracture of right forearm, initial encounter for closed fracture
S42.92XA B Fracture of left shoulder girdle, part unspecified, initial encounter for closed fracture
S52.92XA B Unspecified fracture of left forearm, initial encounter for closed fracture

However, it is noted that unlike ICD–9–CM codes 828.0—Closed multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, and 828.1—Open multiple fractures involving both lower limbs, lower with upper limb, and lower limb(s) with rib(s) and sternum, the IRF PPS ICD–10–CM translation provided no codes for the lower extremities as part of multiple fractures.

So that IRFs may appropriately count patients with multiple fractures that include lower extremity fractures under the presumptive methodology, we proposed to count IRF–PAIs that

contain 2 or more of the ICD–10–CM codes from the three major multiple trauma lists (in the specified code combinations) that are located on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.* These codes would need to be specifically combined so that (a) at least one lower extremity fracture is combined with an upper extremity fracture and/or a rib/sternum fracture or (b) fractures are present in both lower extremities.

In order for patients with multiple fractures to qualify as meeting the 60 percent rule requirement for IRFs under the presumptive methodology, the following codes could be used if combined as described above:

- List A: Major Multiple Trauma—Lower Extremity Fracture
- List B: Major Multiple Trauma—Upper Extremity Fracture
- List C: Major Multiple Trauma—Ribs and Sternum Fracture

We also proposed to remove ICD–10–CM diagnosis code T07—Unspecified multiple injuries from the presumptive methodology list and replace it with codes from the three major multiple trauma lists (in the specified code combinations), as described above. We believe that any patient who suffered multiple trauma and subsequently required admission into an IRF would have experienced an extensive medical examination to identify the scope of his or her injuries in the acute care setting. After a review of the acute care medical record, these injuries would be known to both the IRF pre-admission personnel and the admitting IRF physician, and would be able to be coded from the medical record in the most specific manner possible in the IRF setting.

We received 11 public comments on our proposed revisions to the presumptive methodology list for major multiple trauma, which are summarized below.

Comment: Commenters were generally supportive of our proposal to count IRF cases that contain two or more of the ICD–10–CM codes from three major multiple trauma lists in the specified combinations. However, one commenter suggested that CMS include ICD–10–CM codes on the major multiple trauma lists that represent diagnoses similar to previously accepted ICD–9–CM codes 819.0—Multiple closed fractures involving both upper limbs and limb with rib(s) and sternum and 819.1—Multiple open fractures involving both upper limbs and limb with rib(s) and sternum.

Response: We appreciate the commenters' support of our proposal to count IRF cases that contain two or more of the ICD–10–CM codes from three major multiple trauma lists in the specified combinations. Regarding the comment on upper extremity multiple trauma, in the FY 2015 IRF PPS final rule (79 FR 45872, 45905 through 45908), we finalized our translation of the diagnosis code lists from the ICD–9–CM codes used in the IRF PPS to ICD–10–CM codes. Under the IRF PPS, the GEMs translation provided the following ICD–10–CM combination codes (these are the same combination codes discussed above) as eligible codes for multiple trauma cases for ICD–9–CM codes 819.0 and 819.1:

S42.90XA A Fracture of unspecified shoulder girdle, part unspecified, initial encounter for closed fracture
S52.90XA A Unspecified fracture of unspecified forearm, initial encounter for closed fracture
S22.20XA B Unspecified fracture of sternum, initial encounter for closed fracture
S22.49XA C Multiple fractures of ribs, unspecified side, initial encounter for closed fracture
S42.91XA A Fracture of right shoulder girdle, part unspecified, initial encounter for closed fracture
S52.91XA A Unspecified fracture of right forearm, initial encounter for closed fracture
S42.92XA B Fracture of left shoulder girdle, part unspecified, initial encounter for closed fracture
S52.92XA B Unspecified fracture of left forearm, initial encounter for closed fracture

We have retained these combination codes on the ICD–10–CM presumptive methodology list so that IRFs may continue to count multiple major trauma involving upper extremity and rib/sternum injuries.

Final Decision: After carefully considering the comments that we received, we are finalizing our proposed revisions to the presumptive methodology list for major multiple trauma, effective for IRF discharges occurring on and after October 1, 2017. The lists for major multiple trauma: IRF List A—MMT-Lower Extremity Fracture; IRF List B—MMT-Upper Extremity Fracture; and IRF List C-Ribs and Sternum Fracture are available for download from the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

G. Further Consideration of Unspecified Codes and Arthritis Codes

1. Unspecified Codes

In the FY 2014 IRF PPS final rule (78 FR 47860, 47884 through 47885), we stated that we believe that highly descriptive coding provides the best and clearest way to document the appropriateness of a given patient's admission and would improve the accuracy of the presumptive compliance method of calculating a facility's 60 percent rule compliance percentage. Thus, whenever possible, we believe that the most specific code that describes a medical disease, condition, or injury should be used to document diagnoses on the IRF–PAI. As we stated in that final rule, generally, ''unspecified'' codes are used when there is a lack of information about location or severity of medical conditions in the medical record. We believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or condition exist should be used when coding patients' conditions on the IRF–PAI whenever such codes are available. Moreover, we believe that imprecise codes would inappropriately categorize an overly broad segment of the patient population as having the conditions required for inclusion in a facility's presumptive compliance calculation, which would result in an inflated compliance percentage. If the IRF does not have enough information about the patient's condition to code the more specific codes on the IRF–PAI, we would expect the IRF to seek out and document additional information from the patient's acute care hospital to determine and submit the appropriate, more specific code(s) to use.

In the proposed rule, we used the same approach in analyzing the ICD–10–CM diagnosis codes that we used in our analysis of ICD–9–CM diagnosis codes in the FY 2014 IRF PPS final rule. That is, we went through each ICD–10–CM code currently on the presumptive compliance methodology lists individually to determine whether the ICD–10–CM code is sufficiently specific to reliably identify a subset of conditions suitable for inclusion in the presumptive methodology compliance calculation. If we determined that a given ICD–10–CM code was not sufficiently specific, we ascertained whether more specific codes were available for use (that could count for the presumptive compliance methodology) to identify those members of the patient population with conditions that we believe it would be appropriate to include in the

presumptive methodology compliance calculation. For example, we would likely determine that an injury to an unspecified part of the body would not be sufficiently specific, but we sought to identify where there were codes available (that could count for the presumptive compliance methodology) to code that injury for specific locations on the body. In the FY 2018 IRF PPS proposed rule (80 FR 20711), we proposed to remove certain unspecified diagnosis codes that, on review, we believed to be inappropriate to include in the presumptive compliance list. However, in light of the comments we received, we are going to take a more cautious approach and give further consideration to the removal of the unspecified codes, though we continue to encourage IRFs to adhere to ICD–10–CM guidelines and use the most specific information available to describe a medical disease, condition, or injury.

In section X.G. of this final rule, we summarize and respond to the public comments we received on our proposed removal of the unspecified codes and arthritis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process.

2. Arthritis Codes

In the FY 2014 IRF PPS final rule (78 FR 47887 through 47895), we finalized the removal of ICD–9–CM diagnosis codes for arthritis conditions from the from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list because the inclusion of patients with these medical conditions in the presumptive compliance calculation of the IRF's compliance percentage is conditioned on those patients meeting the described severity and prior treatment requirements. The ICD–9–CM diagnosis codes that reflected these arthritis and arthropathy conditions did not provide any information about the severity of the condition or whether the prior treatment requirements were met. Therefore, we stated in the FY 2014 IRF PPS final rule (78 FR 47888) that we believe that additional information beyond the presence of the code is necessary to determine if the medical record would support inclusion of individuals with the arthritis and arthropathy conditions outlined in our regulations under § 412.29(b)(2)(x) through (xii) in the presumptive compliance calculation of the facility's compliance percentage. For this reason, we finalized the removal of the ICD–9–CM diagnosis codes associated with the medical conditions outlined under § 412.29(b)(2)(x) through (xii) from the list of ICD–9–CM Codes That Meet Presumptive Compliance Criteria list.

Though we removed arthritis diagnosis codes from the ICD–9–CM Codes That Meet Presumptive Compliance Criteria list prior to the ICD–9–CM to ICD–10–CM conversion process, some ICD–10–CM arthritis codes are listed due to the straight translation. Though we had proposed to remove these codes in the FY 2018 IRF PPS proposed rule (80 FR 20711), consistent with our FY 2014 IRF PPS final rule rationale for removing ICD–9–CM arthritis diagnosis codes, we are going to take a more cautious approach and give further consideration to the removal of the remaining ICD–10–CM arthritis codes on the presumptive methodology list.

We received 10 public comments on our proposed removal of the unspecified codes and arthritis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process, which are summarized below.

Comment: Several commenters expressed concerns about the proposed removal of unspecified codes from the presumptive methodology lists. These commenters stated that specific information may not be captured in the record in the acute care setting (for example, the emergency department), and the lack of this information would hinder the ability of the IRF to code the patient. Several commenters encouraged us not to remove codes from presumptive methodology simply because a code is ''unspecified,'' as that descriptor should have no bearing on the patient's current functional status or treatment for the type of condition that typically is treated in IRFs and meets the 60 percent rule.

Response: We recognize that, in rare instances, IRFs may not receive all of the information they need from the referring provider in order to code more specifically, and we want to move cautiously in this regard to ensure that IRFs have the information that they need to code more specifically. We agree with several of the comments that said that the ''unspecified'' descriptor, in and of itself, does not necessarily mean that the case fails to comply with the 60 percent rule criteria. In light of these comments, we have decided to take a more cautious approach and give further consideration to the removal of these unspecified codes. For now, then, we will retain the unspecified codes that were discussed in the FY 2018 IRF PPS proposed rule on the list of ICD–10–CM Codes That Meet Presumptive Compliance Criteria. In addition, we will continue to work together with the National Center for Health Statistics (NCHS), the American Hospital Association (AHA), and other organizations that provide guidance and education on the ICD–10 medical code data set to encourage providers to code to the highest level of specificity possible. For the IRF PPS in particular, we will continue holding National Provider Calls (as we have been doing for the IRF PPS since June 2014) to educate providers on coding to the greatest level of specificity possible in the IRF PPS. We will also continue to monitor the use of these codes and may propose adjustments to the presumptive methodology code lists in the future to ensure that the lists continue to reflect the conditions that meet the 60 percent rule criteria listed in § 412.29(b)(2).

Comment: While one commenter generally supported the CMS goal of encouraging better descriptive coding and documentation to demonstrate the appropriateness of a patient case under the presumptive methodology, the commenter strongly encouraged us not to remove the codes from counting under the presumptive methodology, but instead suggested that we monitor the coding practices of the service providers who refer patients to IRFs as the commenter indicated that the absence of specificity occurs earlier in the patient's hospitalization and negatively impacts IRFs.

Response: We acknowledge that as a post-acute care service provider, IRFs admit patients who are well along the continuum of care and that, rarely, documentation they receive from the acute care setting may be incomplete, making it more difficult to determine appropriate treatment for the patient and hampering the provider's efforts to complete their own medical records. In light of these comments and in an abundance of caution to ensure that IRFs receive the information they need to code more specifically, we will retain the unspecified codes that were re-introduced back onto the lists through the ICD–10–CM conversion process and continue to monitor the practices of service providers who refer patients to IRFs to ensure that the IRFs receive the appropriately detailed information from these providers.

Comment: One commenter suggested that CMS reconsider the removal of arthritis codes from the presumptive methodology lists. The commenter expressed concern that the removal of arthritis codes may impact access to care for certain populations with high incidence of these conditions.

Response: In light of these comments, to ensure that we do not affect access to care for patients with these conditions, we will give further consideration to the removal of these arthritis codes. For now, then, we will retain the arthritis

codes that were re-introduced back onto the lists through the ICD–10–CM conversion process and continue to analyze whether they are appropriate for inclusion on the list.

Comment: One commenter expressed concern that the proposed presumptive methodology revisions, if finalized, would put additional IRFs at risk for meeting the compliance standards and possibly burden IRFs (and CMS contractors) with additional medical record reviews.

Response: We do not agree that the proposed presumptive methodology changes would put any IRFs at risk for failing to meet the 60 percent rule requirements or would cause many of them (if any) to have to use the medical review methodology. First, as we indicated in the FY 2014 IRF PPS final rule (78 FR 47930), the proposed removal of unspecified diagnosis codes would not be expected to have any impact on IRFs' compliance with the 60 percent rule or on the amount of medical record reviews that would need to be completed for determining 60 percent rule compliance because IRFs would be able to choose another more specific code on the list to use instead of the unspecified code. As we did in the FY 2014 final rule, we were careful with the proposed changes for FY 2018 to ensure that more specific codes were available on the list in every instance for IRFs to use instead of an unspecified code. Second, in the FY 2015 IRF PPS final rule (79 FR 45903 through 45905), we implemented a new item on the IRF–PAI form to enable IRFs to indicate to us (and the Medicare Administrative Contractor to verify) whether or not a patient's arthritis condition meets the requirements in § 412.29(b)(2). Thus, removal of the arthritis diagnosis codes from the presumptive methodology list would similarly be expected to have no effect on the number of IRFs that are in compliance with the 60 percent rule requirements or the number of medical record reviews that would need to be completed for determining 60 percent rule compliance because the arthritis cases that count presumptively can be identified through this new verification process. Third, our analysis of the most current IRF–PAI data shows that IRFs' presumptive compliance percentages are almost always well above 60 percent. Thus, IRFs very rarely fail to meet the presumptive methodology or have to use the medical review methodology. However, as noted previously, we have decided to take a more cautious approach and give further consideration to the removal of the unspecified and arthritis codes. For now, then, we will retain the unspecified and arthritis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process, continue to educate providers on the appropriate use of these codes, and continue to analyze whether they are appropriate for inclusion on the list.

Comment: Several commenters requested that CMS more clearly identify the code changes made to the presumptive compliance list and the IGC list by providing tables of the codes that are being added and the codes that are being removed, similar to the way that coding changes are presented in the IPPS setting and the way we presented presumptive methodology changes in the FY 2014 IRF PPS final rule. Other commenters suggested CMS employ a ''crosswalk'' or other mechanism for stakeholders to easily identify proposed changes from existing policy. Some commenters requested that we indicate the policy rationale behind each change on the lists. Another commenter expressed concern that the proposed changes to the code lists are supported with limited clinical or policy rationale. This commenter requested that for future changes to the presumptive methodology, CMS provide a comprehensive policy rationale, with supporting data, for each proposed coding change. Moreover, this commenter stated that it is difficult to determine the rationale behind the proposed changes, that is, whether they are for clinical reasons, policy reasons, due to the ICD–10–CM conversion, or changes related to the changes to the ICD–10 medical data codes set that are implemented annually.

Response: We appreciate the commenters' suggestions, and while we believe that all of the proposed changes are fully supported by the policy rationales discussed in the proposed rule, we agree that it would be helpful for us to further clarify the coding changes to the presumptive compliance list (and other presumptive methodology lists) by providing tables of codes that we are adding and codes that we are deleting. We will include this information in all future rulemaking. For this final rule, we have organized the changes in Table 1—ICD–10–CM Exclusion Codes Removed From IGC List. This list is available for download on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/ICD-10-CM-DataFiles.zip.*

In addition, we will take the commenters' suggestions into account for future refinements to the presumptive methodology code lists, including the suggestion that we include more supporting data for each proposed coding change, along with a comprehensive rationale for any future refinements.

Final Decision: After carefully considering the comments we received on the proposed removal of the unspecified codes and arthritis codes that were re-introduced back onto the lists through the ICD–10–CM conversion process, we are not finalizing these proposed changes to the presumptive compliance list. Instead, we have noted the commenter's concerns regarding issues of patient access to care, burden to providers, and potential absence of adequate information to support specificity of coding in the medical records of referring providers. Based on these concerns, we have decided to take a more cautious approach to these changes and not finalize the changes regarding removal of unspecified codes or arthritis codes. Instead, we will continue to educate providers and to analyze the use of these codes to determine their appropriateness for inclusion on the presumptive methodology list. We may propose additional changes to the presumptive methodology lists in the future, as needed, to ensure that the lists continue to reflect the conditions that meet the 60 percent rule criteria listed in 42 CFR 412.29(b)(2).

H. Further Consideration of ICD–10–CM Code G72.89—Other Specified Myopathies

Through our monitoring of IRFs' use of the ICD–10–CM codes that currently count toward a facility's compliance percentage under the presumptive compliance method, we have discovered what we believe to be inconsistent use of one ICD–10–CM code (G72.89—Other Specified Myopathies) among IRFs. We included this ICD–10–CM code on the presumptive compliance code list based on our understanding that it is intended to represent a relatively narrow set of specified myopathies that are confirmed by the results of specific medical testing and identified as such in the patients' medical records. However, having reviewed certain IRFs' disproportionately higher use of the code, we have found that certain IRFs are using this code more broadly, including to represent patients with generalized weakness who do not meet the requirements in the 60 percent rule under § 412.29(b)(2). For the expanded use of this code by certain IRFs, we proposed to remove this code from the presumptive compliance list because we believed that we were unable to determine from the presence of this

code alone, without additional supporting information from the medical record, that patients coded with this code presumptively meet the 60 percent rule criteria.

We received 15 public comments on our proposal to remove ICD–10–CM code G72.89—Other specified myopathies from the presumptive compliance list, which are summarized below.

Comment: Several commenters supported our proposal to remove G72.89—Other specified myopathies from counting under the presumptive methodology and agreed that this code should not be coded for patients with generalized weakness or general debility.

Response: We appreciate the commenters' support for our proposal to remove G72.89—Other specified myopathies. However, as discussed below, we are not finalizing the removal of this code.

Comment: One commenter noted that among patients who are appropriately coded with G72.89—Other specified myopathies are those with significant medical comorbidities or those who have experienced prolonged hospitalization. Both of these instances may contribute to proximal weakness and loss of function that amount to ''other specified myopathies.'' The commenter stated that these types of patients are best served in an IRF. Several commenters stated that the removal of this code would have a significant impact on presumptive compliance because there is no more specific code on the presumptive compliance list under which these patients can be coded. Another commenter noted that if there is a problem with the overutilization of this code, it may be a matter of physician documentation and provider coding practices in which the code is inappropriately used to code for patients with generalized weakness and not for those who suffer from other specified myopathies. This commenter suggested that, instead of removing this code from the presumptive compliance list, we should address this concern through targeted coding audit reviews. Several commenters recommended that we provide education on the appropriate use of this code and conduct ongoing monitoring of the use of the code. In addition, one commenter noted that medical testing is not the only way for a physician to diagnose a myopathy.

Response: We continue to believe that the inappropriate use of G72.89—Other specified myopathies—does not allow us to determine, from the presence of the code alone without further information from the patient's medical record, that patients coded with this code presumptively meet the 60 percent rule criteria. However, we have decided to take a more cautious approach to ensure that we do not restrict access to IRF care for patients with myopathies, and are not finalizing removal of this code at this time. Our analysis indicates that many IRFs use this code appropriately, and that we are only unable to rely on this code alone for a particular subset of IRFs that are continuing to use the code for patients with generalized weakness and debility. Thus, we agree with many of the commenters that a more direct approach to addressing this issue may be to conduct targeted coding audit reviews (which we understand to mean targeted medical reviews) of claims containing this code, to provide education on the appropriate use of the code, and to conduct ongoing monitoring of the code. We have been and will continue doing these things. We note that we did not mean to imply that we believe that medical testing is the only way to determine whether a patient has an ''other specified myopathy,'' but was simply provided as one possible way of verifying this in the IRF medical record. We will consider re-proposing removal of this code in the future if our analysis indicates that the code continues to be used inappropriately.

Final Decision: After careful consideration of the comments we received regarding our proposal to remove code G72.89—Other specified myopathies from the presumptive methodology code list, we are not finalizing the removal of this code because we agree with the commenters' suggestions that a more effective way to deal with inappropriate utilization of this code is through focused medical reviews of claims containing this code, provider education on the appropriate use of this code, and ongoing monitoring of the use of this code. We note that we may again propose removal of this code from the presumptive methodology lists in the future, if we find that the code continues to be used inappropriately.

I. Implementation of the Revisions to the Presumptive Methodology

All revisions in the proposed rule were scheduled to take effective for IRF discharges occurring on or after October 1, 2017, unless otherwise stated. We believed that this was the most appropriate timing of the changes to the presumptive methodology because many of the changes (specifically, the restoration of the traumatic brain injury, hip fracture, and major multiple trauma codes) had been requested by IRFs, and they had also requested that these changes be made as soon as possible. However, we received 16 comments on the effective date for our proposed revisions to the presumptive methodology lists, which are summarized below.

Comment: Several commenters expressed concerns about the proposed effective date of October 1, 2017 for the revisions to the presumptive methodology that would remove ICD–10–CM codes from counting. Commenters generally stated that making the effective date of these changes on a date other than the start date of an IRF's compliance review period could potentially constitute ''impermissible retroactive rulemaking'' (because it would make IRFs have to go back to the start of the current compliance review period and reevaluate their admitting practices to ensure that the facility is in compliance with the 60 percent rule for the entire compliance review period), could create added confusion and burden among IRFs by making IRFs have to absorb potentially disruptive changes in the middle of a compliance review period, was inconsistent with the way these changes have been applied historically, and could affect IRFs differently depending on each IRF's particular cost reporting period (or compliance review period), potentially causing inequities among IRFs.

Response: We generally agree with the commenters that we should implement revisions to the presumptive methodology at the start of each IRF's compliance review period to ensure that implementation of the changes is equitable, minimizes the amount of confusion and burden among IRFs, is consistent with past implementation of similar changes, and affects all IRFs on a similar basis. As we are not finalizing any of the changes to the presumptive methodology in this final rule that would remove codes from counting under the presumptive methodology, we will keep these comments in mind for potential implementation of changes to the presumptive methodology codes in future rulemaking.

Comment: Several commenters suggested that we implement proposed changes that would increase the number of cases counting under the presumptive methodology (that is, the changes involving traumatic brain injury codes, hip fracture codes, and major multiple trauma codes) as soon as possible to ensure continued access to IRF services for patients with these conditions. The commenters suggested that we either

make these changes effective retroactively to October 1, 2015 (the applicable date when ICD–10–CM became the required medical code set for use on Medicare claims and IRF–PAI submissions for the IRF PPS), or for discharges on or after October 1, 2017, at the latest.

Response: We agree with the commenters that the immediacy of the need to ensure that patients with traumatic brain injuries, hip fractures, and major multiple traumas continue to have appropriate access to IRF services means that we need to ensure that these codes count toward meeting the 60 percent rule requirements under the presumptive methodology as soon as possible. As 60 percent rule determinations are always made prospectively, we disagree with the commenters and, consistent with past implementation, will implement these changes prospectively, effective for IRF discharges occurring on and after October 1, 2017, which represents the earliest possible prospective implementation time.

Comment: Several commenters stated that IRFs need adequate time to make appropriate adjustments to the changes in the code lists that would that would remove ICD–10–CM codes from counting, including time to educate and train staff and clinicians. For this reason, they said that we should delay the effective date of any such changes by at least a year to allow IRFs additional time to adjust to the changes.

Response: We are not finalizing any changes in this final rule that would remove ICD–10–CM codes from counting. However, we will take these comments into account for implementation of changes to the presumptive methodology in future rulemaking.

Final Decision: After carefully considering the comments we received on the effective date for our proposed revisions to the presumptive methodology lists, we are implementing the changes to the presumptive methodology that will increase the number of cases counting under the presumptive methodology (that is, the changes involving traumatic brain injury codes, hip fracture codes, and major multiple trauma codes) for all IRF discharges occurring on or after October 1, 2017. As previously discussed in sections X.G and X.H of this rule, we are not implementing any of the changes that would remove codes from counting under the presumptive methodology at this time, so we will take the comments on the effective date of these changes into consideration for possible future rulemaking on this issue.

J. Summary of Comments Regarding the Criteria Used To Classify Facilities for Payment Under the IRF PPS

Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary discretion in defining a ''rehabilitation unit'' and a ''rehabilitation hospital'' for payment under the IRF PPS. In 1983, when Congress first authorized the Secretary to define IRFs for purposes of excluding them from the IPPS, we used some of the accreditation requirements that were used by the Joint Commission on Accreditation of Hospitals (which is now known as the Joint Commission) and other accrediting organizations to develop our definition of a rehabilitation hospital. We also used other criteria that we believed distinguished rehabilitation hospitals from other types of hospitals, including the requirement that the hospital must be primarily engaged in furnishing intensive rehabilitation services as demonstrated by patient medical records showing that, during the hospital's most recently completed 12-month cost reporting period, at least 75 percent of the hospital's inpatients were treated for one or more conditions specified in these regulations that typically require intensive inpatient rehabilitation (48 FR 39756). We included this requirement, commonly referred to as the 75 percent rule, as a defining feature of a rehabilitation hospital because we believed that examining the types of conditions for which the hospital's inpatients are treated, and the proportion of patients treated for conditions that typically require intensive inpatient rehabilitation, will help distinguish those hospitals in which the provisions of rehabilitation services is a primary, rather than a secondary, goal (48 FR 39756).

The original list of medical conditions used in evaluating this requirement were stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur (hip fracture), brain injury, and polyarthritis, including rheumatoid arthritis. This list of 8 medical conditions was partly based on the information contained in a document entitled, ''Sample Screening Criteria for Review of Admissions to Comprehensive Medical Rehabilitation Hospitals/Units,'' produced by the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. On January 3, 1984, we published a final rule entitled ''Medicare Program: Prospective Payment for Medicare Inpatient Hospital Services'' (49 FR 234), that expanded the initial list of conditions to include neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns, in response to public comment.

In the FY 2004 IRF PPS proposed rule, we provided additional background on how the definition of an IRF developed and evolved over time. In that proposed rule, we also discussed the need to use these requirements in distinguishing IRFs from other types of inpatient facilities and thereby maintaining compliance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act. In addition, we stated that making this distinction is also critical to fulfilling the requirements of section 1886(j)(1)(A), which requires Medicare to make payments to IRFs under a PPS specifically designed for the services they furnish.

In the May 7, 2004 final rule, we updated the list of conditions used to evaluate compliance with the ''75 percent rule'' from 10 conditions to 13, and implemented a new presumptive compliance methodology, as discussed previously in this proposed rule, to simplify the rule and to promote more consistent enforcement. The list of 13 conditions that were developed in the May 7, 2004 final rule, which is still the list that we use to evaluate compliance with the rule and which section 5005 of the Deficit Reduction Act of 2005, as amended by section 115(b) of MMSEA, subsequently required to be used, can be found in § 412.29(b)(2):

- Stroke.
- Spinal cord injury.
- Congenital deformity.
- Amputation.
- Major multiple trauma.
- Fracture of femur (hip fracture).
- Brain injury.
- Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
- Burns.
- Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies, under specified conditions (see § 412.29(b)(2)(x)).
- Systemic vasculidities with joint inflammation, under specified conditions (see § 412.29(b)(2)(xi)).
- Severe or advanced osteoarthritis (osteoarthritis or degenerative joint disease), under specified conditions (see § 412.29(b)(2)(xii)).
- Knee or hip joint replacement, or both, if the replacements are bilateral, if the patient is age 85 or older, or if the

patient has a body mass index (BMI) of at least 50.

Subsequent to the May 7, 2004 final rule, on June 16, 2005, the Government Accountability Office (GAO) issued a report entitled, ''More Specific Criteria Needed to Classify Inpatient Rehabilitation Facilities,'' which recommended that CMS describe more thoroughly the subgroups of patients within a condition that require IRF services, possibly using functional status or other factors in addition to condition. In this report, the GAO did not recommend that more conditions be added to the list of conditions in § 412.29(b)(2), in part because the experts convened for this study could not agree on conditions to add and in part because the GAO said that it believed that the rule should instead be ''refined to clarify which types of patients should be in IRFs as opposed to another setting.''

In addition, in September 2009, we issued a Report to Congress entitled ''Analysis of the Classification Criteria for Inpatient Rehabilitation Facilities.'' This report was required by section 115 of MMSEA, which also required the IRF compliance rate to be set no higher than 60 percent and required comorbidities to continue to be included in the compliance rate calculation. In conducting the analysis for this report, the contractor (Research Triangle Institute (RTI) International) solicited public comments and held a technical expert panel (TEP) to analyze the effects of, and potential refinements to, the 60 percent rule and the list of conditions that are used to evaluate compliance with the 60 percent rule. The report generally concluded the following:

- In considering changes to the 60 percent rule, CMS should establish policies that ensure the availability of IRF services to beneficiaries whose intensive rehabilitation needs cannot be adequately served in other settings.
- CMS should ensure that criteria for IRF classification focus on the intensity of service needs that justify the higher IRF payment rate.
- An IRF stay is not needed for all patients having a rehabilitation-type diagnosis.
- Patient characteristics, such as medical comorbidities, prognosis for improvement and cognitive deficits, are important to consider when identifying appropriate IRF patients.

Thus, to assist us in generating ideas and information for analyzing refinements and updates to the criteria used to classify facilities for payment under the IRF PPS, in the FY 2018 IRF PPS proposed rule (82 FR 20712), we specifically solicited public comments from stakeholders on the 60 percent rule, including but not limited to, the list of conditions in § 412.29(b)(2).

We received 28 comments in response to our solicitation, which are summarized below.

Comment: Most commenters suggested elimination of the 60 percent rule, indicating that the rule does not allow IRF care to be ''patient-centered''. Many of these commenters suggested that existing criteria, including the IRF coverage requirements and the requirements for IRF classification, such as the need to conduct preadmission screenings on all patients, provide close physician supervision, provide interdisciplinary care, etc., would suffice for defining IRF care and would be more patient-centered. Alternatively, commenters suggested that we lower the IRF compliance percentage from 60 percent to 50 percent. In addition, many commenters suggested that we add specific conditions to the list of conditions that meet the rule, including organ transplant, cardiac, pulmonology, and oncology conditions. Many commenters stated that elimination or relaxing of the 60 percent rule would allow IRFs to more easily participate in alternative payment models.

Response: We appreciate the commenters' suggestions, and will carefully consider these suggestions as we explore ways to modernize the Medicare program.

XI. Subregulatory Process for Certain Updates to Presumptive Methodology Diagnosis Code Lists

We have not established a formal process for updating the code lists used for the presumptive compliance methodology to account for changes to the ICD–10 medical code data set or to alert providers to the effects of these changes on the presumptive methodology code lists. In the proposed rule, we proposed to establish such a formal process, to distinguish between non-substantive updates to the ICD–10–CM codes on the lists that would be applied through a subregulatory process and substantive revisions to the ICD–10–CM codes on the lists that would only be proposed and finalized through notice and comment rulemaking.

In the proposed rule, we proposed to establish a formal process of updating the lists of ICD–10–CM codes used in the presumptive compliance methodology using a subregulatory process to apply non-substantive changes to the lists of ICD–10–CM codes used in the presumptive compliance methodology in accordance with changes to the ICD–10 medical data codes set that are implemented annually by the ICD–10 Coordination and Maintenance Committee (information about the ICD–10 Coordination and Maintenance Committee can be found at *https://www.cdc.gov/nchs/icd/icd10_maintenance.htm*). We would continue our practice of using notice-and-comment rulemaking to propose and finalize substantive changes to the lists of ICD–10–CM codes used in the presumptive methodology.

The ICD–10 Coordination and Maintenance Committee is a federal interdepartmental committee that is chaired by representatives from the NCHS and by representatives from CMS. The committee typically meets bi-annually, and publishes updates to the ICD–10 medical code data sets in June of each year, which become effective October 1 of each year. Note that the ICD–10 Coordination and Maintenance Committee has the ability to make changes to the ICD–10 medical code data sets effective on April 1, but has not yet done so. In accordance with 45 CFR part 162, subpart J, we require Medicare providers to use the most current ICD–10 medical code data set in coding Medicare claims and IRF–PAIs.

To ensure that the lists of ICD–10–CM codes used in the presumptive compliance methodology are updated in accordance with changes to the ICD–10 medical code data set, we proposed to obtain the list of changes to the ICD–10 medical code data set from the ICD–10 Coordination and Maintenance Committee (at *https://www.cdc.gov/nchs/icd/icd10_maintenance.htm*) and, through a subregulatory process, apply all relevant changes to the lists of codes used in the presumptive compliance methodology. Any such changes would be limited to those specific changes that are necessary to maintain consistency with the most current ICD–10 medical code data set, which Medicare providers are generally required to use in accordance with 45 CFR part 162, subpart J. Our intent in applying these changes through the subregulatory process is to keep the same conditions on the presumptive methodology lists, but ensure that the codes used to identify those conditions are synchronized with the most current ICD–10 medical code data set.

We proposed to publish the updated lists of codes on the IRF PPS Web site which can be accessed at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html* (we note that we inadvertently included the incorrect link in the proposed rule (82 FR 20690, 20713); this is the correct link, which was accessible from the original link in the proposed rule)

before the effective date for these changes so that IRFs will be able to use the most current ICD–10 medical code data set to appropriately count cases toward meeting the 60 percent rule requirements under the presumptive compliance methodology.

For example, ICD–10–CM code M50.02—Cervical disc disorder with myelopathy, mid-cervical region—is one of the ICD–10–CM codes on the presumptive compliance methodology list that ''counts'' a patient as meeting the 60 percent rule requirements if the patient is coded with this diagnosis code. However, effective October 1, 2016, the ICD–10 Coordination and Maintenance Committee made M50.02 an ''invalid'' code, meaning that this code is no longer available for use within the ICD–10 medical code data set. In place of this code, the ICD–10 Coordination and Maintenance Committee added:

- M50.020—Cervical disc disorder with myelopathy, mid-cervical region, unspecified level (new code),
- M50.021—Cervical disc disorder at C4–C5 level with myelopathy (new code)
- M50.022—Cervical disc disorder at C5–C6 level with myelopathy (new code)
- M50.023—Cervical disc disorder at C6–C7 level with myelopathy (new code)

As we did not have a process for updating the ICD–10–CM codes in the presumptive compliance methodology prior to October 1, 2016, we were unable to reflect this change in the presumptive compliance methodology and therefore only counted patients that had M50.02 on their IRF–PAI submission and were not able to recognize codes M50.020, M50.021, M50.022, or M50.023 in the presumptive compliance methodology. Thus, an IRF that adopted the changes to the ICD–10 medical code data set on October 1, 2016, as required, and coded a patient with, for example, M5.023, would not have that patient counted as meeting the 60 percent rule requirements under the presumptive compliance methodology (unless the patient happened to have another ICD–10–CM code that would have counted under the presumptive compliance methodology). The update process that we proposed in the proposed rule would enable us to remove the invalid code M50.02 and add the new codes M50.020, M50.021, M50.022, and M50.023 to the lists of codes used in the presumptive compliance methodology prior to the effective date of the change (October 1, 2016) so that an IRF's appropriate use of the newly added code M50.023 would allow the patient to count as meeting the 60 percent rule requirements.

We note that, in the example above, we would not make any policy judgments in adopting the changes to the ICD–10 medical code data set through subregulatory means. Whether or not we believed, for example, that M50.020 might be too non-specific to include in the presumptive compliance methodology, we would nevertheless add it through this subregulatory process because we would treat M50.020, M50.021, M50.022, and M50.023 exactly the same as the M50.02 code that they replaced. We would simply replace the invalid code with the four new valid codes. If, hypothetically speaking, we were to decide at a later date that M50.020 is too non-specific and would therefore want to remove it from the presumptive compliance lists, we would consider that to be a substantive change that would necessitate notice and comment rulemaking. Any substantive changes to the lists of codes used in the presumptive compliance methodology would be promulgated through notice and comment rulemaking.

In the FY 2007 IRF PPS final rule (71 FR 48354 at 48360 through 48361), we implemented the same subregulatory updating process for the IRF tier comorbidities list (also a list of ICD–10–CM codes) that we proposed to implement for the lists of ICD–10–CM codes used in the presumptive compliance methodology. As we discussed in that final rule, we believe that the best way for us to convey information about changes to the ICD–10 medical code data set that affect the presumptive compliance lists and alert providers to non-substantive program changes that result is to update the lists using a subregulatory process and make the documents containing the program's lists of ICD–10–CM codes web-based, rather than publishing each non-substantive change to the ICD–10–CM codes in regulation. We believe that this would ensure providers have the most up-to-date information possible for their 60 percent compliance purposes. Therefore, we proposed that each year's updated lists of ICD–10–CM codes for presumptive compliance methodology will be available on the IRF PPS Web site (located at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html*) prior to the effective date of the changes to the ICD–10 medical code data set.

The current presumptive compliance lists are available for download from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html.* These lists reflect the substantive revisions outlined in this final rule, as well as adoption of the ICD–10 Coordination and Maintenance Committee's draft changes to the ICD–10 medical code data sets, effective October 1, 2017. The version of these lists that is finalized in conjunction with this final rule will constitute the baseline for any future updates to the presumptive methodology lists.

We received 13 public comments on the proposed subregulatory process for certain updates to the presumptive methodology ICD–10–CM code lists, which are summarized below.

Comment: Several commenters suggested that we more clearly define how we determine a ''substantive'' change versus a ''non-substantive'' change in regards to the proposed subregulatory process to update the presumptive methodology code lists. Another commenter stated that any change or modification to the presumptive methodology that would make it more restrictive, should be viewed as ''substantive'' and thus should not be performed outside of formal notice and comment procedures. However, this commenter believed that changes that make the presumptive methodology less restrictive would be best immediately implemented. Still, several other commenters stated that they supported the proposal to make non-substantive changes to the presumptive methodology lists in accordance with annual changes to the ICD–10–CM code set. This commenter stated that mirroring the ICD–10–CM code set updates without a timing delay (like that of a formal proposed rule schedule) would provide better synchronization with national coding standards.

Response: The proposed subregulatory process would only be used to make changes that are necessary to maintain consistency with the most current ICD–10 medical code data set, which Medicare providers are generally required to use in accordance with 45 CFR part 162, subpart J. Our intent in applying these changes through the subregulatory process is to keep the same conditions on the presumptive methodology lists, but ensure that the codes used to identify those conditions are synchronized with the most current ICD–10 medical code data set.

We note that we would not make any policy judgments in adopting the changes to the ICD–10 medical code data set through subregulatory means.

Any substantive changes to the lists of codes used in the presumptive compliance methodology would be promulgated through notice-and-comment rulemaking.

Comment: One commenter stated that since the ICD–10–CM medical data code set changes are finalized more than a year in advance of the implementation date, CMS has sufficient time to include these changes in annual rulemaking. The commenter stated that the changes that are necessary to maintain consistency with the most current ICD–10 medical data code set should not necessarily be considered ''non-substantive.''

Response: The commenter is incorrect that the updates to the ICD–10 medical code data set are finalized each year more than a year before the changes become effective. ICD–10 medical data code set changes are generally finalized in June of each year, and take effect on October 1 of that same year. For further discussion of the ICD–10 Coordination and Maintenance Committee and the process that the committee uses to update the ICD–10 medical code data set, please refer to the FY 2018 IPPS/LTCH PPS proposed rule (82 FR 19850 through 19852). Thus, we do not believe that we would have sufficient time to include these changes in the annual rulemaking.

Comment: Several commenters stated that if CMS finalizes this proposed sub-regulatory process, it should clearly delineate the changes in a manner that makes clear what diagnosis codes are being deleted or added.

Response: We appreciate these suggestions and will provide lists of which codes are being added and removed as part of this subregulatory process in conjunction with the IRF final rule or notice for each fiscal year.

Final Decision: After careful consideration of the comments we received on the proposed subregulatory process for adopting changes to the ICD–10–CM medical code data set for the presumptive methodology lists, we are finalizing this proposed subregulatory process, effective for discharges occurring on and after October 1, 2017. We are providing a list of the codes that indicates whether codes are being added, removed, or the code label revised for FY 2018 as a result of this subregulatory process on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Data-Files.html* in conjunction with this final rule.

XII. Use of IRF–PAI Data To Determine Patient Body Mass Index (BMI) Greater Than 50 for Cases of Lower Extremity Single Joint Replacement

Previously, we had no information from the IRF–PAI that we could use to calculate the BMI for patients. Thus, we were not able to count lower-extremity joint replacement patients with BMI greater than 50 as meeting the 60 percent rule requirements using the presumptive compliance methodology. We could only identify these specific patients using the medical review methodology.

In the FY 2014 IRF PPS final rule (78 FR 47860, 47896 and 47899), we added Item 25A-Height and Item 26A-Weight to the IRF–PAI. This information can be used to calculate BMI and thereby provides the data necessary to presumptively identify and count lower extremity single joint replacement cases with a BMI greater than 50 in an IRF's 60 percent rule compliance percentage. In the proposed rule, we proposed to use the information recorded for Item 25A-Height and Item 26A-Weight on the IRF–PAI in the calculation of a patient BMI greater than 50 and to use that data to determine and presumptively count lower extremity single joint replacement cases toward an IRF's compliance percentage.

We received 2 public comments on the proposed plan to calculate BMI greater than 50 for cases of lower extremity single joint replacement, which are summarized below.

Comment: One commenter expressed support for this proposal as it would serve to identify a patient's BMI without the need for a separate medical review. Another commenter expressed concern about using the information recorded for Item 25A-Height and Item 26A-Weight on the IRF–PAI to calculate BMI greater than 50 for cases of lower extremity single joint replacement and thereby provide the data necessary to presumptively identify and count lower extremity single joint replacement cases with a BMI greater than 50 in an IRF's 60 percent rule compliance percentage. The commenter stated that this method would be inconsistent with other methods we use to determine presumptive compliance, that is, through ICD–10–CM diagnosis codes. The commenter suggested that the ICD–10–CM code Z68.43—Body mass index (BMI) 50–59.9, adult be included on the Presumptive Methodology list. Moreover, the commenter stated that using this code as an etiologic diagnosis or comorbid condition instead of using two items from the IRF–PAI that previously have been unrelated to the presumptive methodology would be more straightforward.

Response: We disagree with the commenter's statement that we only use ICD–10–CM codes in the presumptive compliance methodology. In fact, as indicated on page 8 of the specifications document entitled ''Determining IRF Compliance_specifications_081915.pdf'' (available for download from the IRF PPS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Criteria.html),* we already use a patient's age, as calculated as the number of complete years between the admission date and the patient's birth date, to count patients presumptively who are being treated in the IRF for lower-extremity joint replacement and are over the age of 85. Using the height and weight items on the IRF–PAI to compute a patient's BMI is consistent with this approach. As the height and weight information is required on the IRF–PAI, we believe that this information would be more reliable and less burdensome than depending on the IRF to code an additional etiologic code or comorbidity using ICD–10–CM code Z68.43—Body mass index (BMI) 50–59.9.

Final Response: After careful consideration of the comments we received, we are finalizing our proposal to use the information recorded for Item 25A-Height and Item 26A-Weight on the IRF–PAI to calculate BMI greater than 50 for cases of lower extremity single joint replacement and to use that data to determine and presumptively count lower extremity single joint replacement cases toward an IRF's presumptive compliance percentage, effective for all IRF discharges occurring on and after October 1, 2017.

XIII. Revisions and Updates to the IRF Quality Reporting Program (QRP)

A. Background and Statutory Authority

Section 3004(b) of the PPACA amended section 1886(j) of the Act by adding paragraph (7), requiring the Secretary to establish the IRF QRP. This program applies to freestanding IRFs, as well as IRF units affiliated with either acute care facilities or critical access hospitals. Beginning with the FY 2014 IRF QRP, the Secretary is required to reduce any annual update to the standard federal rate for discharges occurring during such fiscal year by 2 percentage points for any IRF that does not comply with the requirements established by the Secretary. Section 1886(j)(7) of the Act requires that for the FY 2014 IRF QRP, each IRF submit data on quality measures specified by the Secretary in a form and manner, and at

a time, specified by the Secretary. For more information on the statutory history of the IRF QRP, please refer to the FY 2015 IRF PPS final rule (79 FR 45908).

When we use the term ''FY [year] IRF QRP'', we are referring to the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met for a IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) amended Title XVIII of the Act, in part, by adding a new section 1899B, entitled ''Standardized Post-Acute Care (PAC) Assessment Data for Quality, Payment and Discharge Planning,'' that enacts new data reporting requirements for certain post-acute care (PAC) providers, including IRFs. Specifically, sections 1899B(a)(1)(A)(ii) and (iii) of the Act require IRFs, long-term care hospitals (LTCHs), skilled nursing facilities (SNFs) and home health agencies (HHAs), under the provider type's respective quality reporting program (which, for IRFs, is found at section 1886(j)(7)), to report data on quality measures specified under section 1899B(c)(1), which in turn requires that the measures cover at least five domains, and data on resource use and other measures specified under section 1899B(d)(1), which in turn requires that the measures cover at least three domains. Section 1899B(a)(1)(A)(i) further requires each of these PAC providers to report under their respective quality reporting program standardized patient assessment data in accordance with section (b), which requires that the data be for at least the quality measures specified under section (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. Section 1899B(a)(1)(B) requires that all of the data that must be reported in accordance with section 1899B(a)(1)(A) be standardized and interoperable 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. For information on the IMPACT Act, please refer to the FY 2016 IRF PPS final rule (80 FR 47080 through 47083).

B. General Considerations Used for Selection of Quality Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality measures, such as alignment with the CMS Quality Strategy,[1] which incorporates the three broad aims of the National Quality Strategy,[2] please refer to the FY 2015 IRF PPS final rule (79 FR 45911) and the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

As part of our consideration for measures for use in the IRF 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 IRF setting. We have previously adopted measures with the term ''Application of'' in the names of those measures. We have received questions pertaining to the term ''application'' and want to clarify that when we refer to a measure as an ''application of'' the measure, we mean that the measure will be used in the IRF setting, rather than the setting for which it was endorsed by the NQF. For example, in the FY 2016 IRF PPS final rule (80 FR 47096 through 47100), we adopted a measure entitled, Application of Percent of Residents Experiencing One or More Falls With Major Injury (Long Stay) (NQF #0674), which is currently endorsed for the nursing home setting, but not for the IRF setting. For such measures, we intend to seek NQF endorsement for the IRF setting, and if the NQF endorses one or more of them, we will update the title of the measure to remove the reference to ''application.''

We received several comments generally related to the proposed measures, the IMPACT Act, NQF endorsement, and training needs, which are summarized and discussed below.

Comment: Several commenters expressed support for the goals and objectives of the IMPACT Act, including the standardization of patient assessment data across PAC settings. One commenter noted that the collection of standardized patient assessment data in PAC settings will help ensure that PAC patients receive quality care in the appropriate setting. One commenter expressed support for the IMPACT Act quality measure domains and data elements. One commenter conveyed support for the continued additions and modifications to the IRF QRP as mandated by the IMPACT Act, stating that regulatory changes from the IRF QRP have not only required IRFs to focus more on care processes and data collection, but also promoted a shift in provider focus toward improved care quality, increased transparency, and enhanced provider accountability. A few commenters expressed appreciation for CMS' efforts to comply with the IMPACT Act, including CMS' efforts to maintain regular communication with stakeholders regarding the status of all aspects of the IMPACT Act implementation. However, one of the commenters indicated additional time may be necessary to fully implement changes outlined in the proposed rule.

Response: We appreciate the commenters' support for the goals and objectives of the IMPACT Act to standardize data across PAC settings. We believe that standardizing patient assessment data will allow for the exchange of data among PAC providers to facilitate care coordination and improve patient outcomes. We value feedback regarding appreciation for CMS' efforts to maintain regular communication with stakeholders regarding implementation of the IMPACT Act. We will continue to utilize different mechanisms to communicate with stakeholders including memos, emails, Medicare Learning Network (MLN) announcements, and notices on our IRF QRP Web site to communicate further regarding implementation of the IMPACT Act. We also appreciate the commenters' feedback regarding the need for sufficient time to implement required changes. We are cognizant that all quality reporting processes are on-going and take time to implement. We believe the rulemaking process takes these timing issues into account and permits sufficient time for providers to implement appropriate data collection and reporting processes.

Comment: A few commenters expressed concern about inconsistencies and insufficiencies in CMS training and support related to the collection of the quality measure data implemented in the IRF QRP. One commenter requested that CMS provide additional training materials and further clarification related to the collection of standardized patient assessment data, prior to the implementation of new quality measures.

Response: We appreciate commenter's feedback regarding the need for consistent training. We are committed to providing educational opportunities to

[1] *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html*

[2] *http://www.ahrq.gov/workingforquality/nqs/nqs2011annlrpt.htm.*

ensure consistent collection of valid and reliable patient data. In order to ensure consistent data collection, we engage in multiple educational efforts regarding the coding of data elements. These include training events, updates to the manuals and training materials, and responses to Help Desk questions to promote understanding and proper coding of these data elements. As we further develop and modify any adopted quality measures or standardized patient assessment data elements, we will continue to engage in these training activities.

Comment: One commenter noted the role of the NQF-convened MAP and the role of this public-private partnership for meeting CMS goals. The commenter further noted that the NQF has improved transparency in measure selection. A few commenters expressed concern about quality measures that do not have NQF endorsement. One commenter stated that all quality measures should be NQF endorsed in order to demonstrate validity. One commenter expressed concern about quality measures specified to meet IMPACT Act requirements that do not have PAC setting-specific NQF endorsement. The commenter recommended that CMS delay or suspend the implementation of quality measures and standardized patient assessment data elements until the measures receive setting-specific NQF endorsement.

Response: We acknowledge that the NQF-convened MAP serves a critical function in evaluating measures under consideration and providing recommendations for measure implementation prior to rulemaking though MAP support is not a requirement for a measure to be proposed or finalized. However, as the MAP's role is to maintain transparency for the public and encourage public engagement throughout the measure development process, we value the MAP's input and take into consideration all input received.

We would like to clarify that the MAP recommended ''conditional support for rulemaking'' for the proposed measures for the IRF QRP. According to the MAP, the term ''conditional support for rulemaking'' is applied when a measure is fully developed and tested and meets MAP assessment criteria; however, should meet a condition specified by MAP before it can be supported for implementation. Measures that are conditionally supported are not expected to be resubmitted to MAP. In contrast, the MAP uses the phrase ''do not support'' when it does not support the measure at all.

For the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, the MAP Post-Acute Care/Long-Term Care (PAC/LTC) Workgroup met on December 14 and 15, 2016, and provided CMS a recommendation of ''support for rulemaking'' for use of the measure in the IRF 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 IRF QRP. The MAP's conditions of support include as a part of measure implementation, that CMS provide guidance on the correct collection and calculation of the measure result. We intend to comply with all conditions recommended by the MAP and will engage in intensive training and guidance efforts to ensure appropriate calculation of the measure.

We have consistently used the MAP process to improve measures prior to rulemaking and implementation and to ensure continued enhancement of the IRF QRP. We believe that the measures have been fully and robustly developed, and believe they are appropriate for implementation and should not be delayed.

Comment: We received a few comments regarding standardization and interoperability of quality measures and patient assessment data elements. One commenter expressed concern about quality measures specified to meet IMPACT Act requirements that are not standardized and interoperable across PAC settings. The commenter recommended that CMS delay or suspend the implementation of quality measures and patient assessment data elements until the quality measures are standardized and interoperable across all PAC settings. Another commenter stated that the IRF–PAI, LTCH Care Data Set, MDS 3.0, and OASIS assessment instruments are not interoperable and not appropriate for measuring standardized patient assessment data across PAC settings. The commenter recommended that CMS develop a new uniform reporting tool that is interoperable across PAC settings, in order to align quality measures across PAC settings, further the objectives of the IMPACT Act, simplify reporting requirements, and reduce the financial and administrative burden of the IRF–PAI.

Response: The data elements currently included in IMPACT Act measures are standardized and have been mapped to electronic exchange content standard vocabularies (such as LOINC and SNOMED) to enable interoperability. We are engaging in efforts to further facilitate interoperability, including populating the Data Element Library (DEL) data base. The DEL includes information to support interoperability, including information on patient assessment data elements, the domain of the element, whether the data elements are standardized across patient assessment instruments and applicable health information technology content and exchange standards. Regarding the recommendation that CMS delay or suspend the implementation of quality measures and patient assessment data elements, we discuss below our decision to not finalize the majority of our proposals related to the reporting of standardized patient assessment data.

As for the request for a new uniform reporting tool, we recognize that data are currently collected by means of the commonly leveraged assessment instruments for each PAC setting; however, each assessment instrument has been developed to address patient care specific to that setting. Also, the use of setting-specific data elements and quality measures helps ensure that measures assess patient populations appropriately by setting and would preclude the development of a uniform assessment instrument that is utilized across PAC settings. Finally, data collected via assessment instruments are also used for other purposes, including for payment, survey, and certification.

Comment: One commenter noted the role of the IMPACT Act in standardizing data collection across PAC settings to facilitate meaningful comparisons between PAC settings and protect Medicare beneficiaries against underservice. One commenter expressed agreement with CMS that quality improvement is appropriate for all patients regardless of payer source and expressed concern, along with several other commenters, that data for assessment-based quality measures are collected on different patient populations across PAC settings, inhibiting cross-setting comparison and impacting data validity and reliability. One commenter expressed concern that quality measures with different patient populations in the denominator are misleading to consumers and providers and requested that CMS clearly identify which measures are comparable. One commenter recommended that quality measures and data collection implemented under the IMPACT Act apply to uniform Medicare populations. One commenter expressed concern that the definition for standardized patient assessment data may be misinterpreted to mean that measures developed using standardized patient assessment data are identical across PAC settings. The

commenter expressed further concern that IMPACT Act measures are developed by PAC setting rather than across PAC settings, resulting in measures that use standardized assessment data but have risk adjustment and covariates that are unique to each PAC setting, limiting comparability. Multiple commenters expressed concern that current and proposed quality measures are not comparable across PAC settings because the measures are not adequately standardized across settings. One commenter noted that measures are not comparable across PAC settings because measures are not consistently representative of unique patient populations by PAC setting. One commenter expressed concern that some measures are not only not comparable across PAC settings, but also not comparable over time within the same PAC setting.

Response: We appreciate comments regarding support for the IMPACT Act and quality improvement efforts for all patients regardless of payer source. While we acknowledge data for assessment-based quality measures are currently collected on different patient populations across PAC settings, primarily related to payer, we note that measures are developed and tested in their intended settings, ensuring greater reliability and validity.

Regarding the concern that quality measures with different patient population denominators are misleading, we seek to clarify the intent and use of quality measures through rulemaking, provider training and ongoing communication with stakeholders. Ongoing communication includes posting measure specifications and public reporting.

Additionally, we are working, in collaboration with our measure contractors, to standardize the measure methodology where feasible. For example, the patient assessment-based measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, was developed to be uniform across the PAC settings in terms of the measure definitions, measure calculations, and risk-adjustment. However, there is currently variation in the measure across settings primarily due to the data sources for each PAC setting. Refinement of measures is a significant part of the measure lifecycle which ensures that measures are reliable and valid. If significant refinements or modifications are made to measures, we will ensure these changes are clearly communicated to all stakeholders.

Comment: Several commenters expressed concern regarding the increasing burden of reporting data under the current IRF QRP. Several commenters expressed concern that increased administrative burden requires additional facility clinical staff for data collection, which may take time away from patient care. One commenter expressed concern about time and financial resources expended on staff training to ensure data reporting accuracy. One commenter expressed concern about an increased regulatory and financial burden for providers without evidence of increased care quality or cost reduction. A few commenters stated that the IRF–PAI has increased in length and now requires clinicians to spend additional time on patient assessments. One commenter recommended that CMS further harmonize measures to reduce burden and enable clinical staff to focus on patient care.

Response: We appreciate the commenters' concerns regarding perceived burden due to changes to the IRF QRP as a result of the IMPACT Act. Further, we appreciate the importance of avoiding undue burden on providers and will continue to evaluate and avoid any unnecessary burden associated with the implementation of the IRF QRP. We will continue to work with stakeholders to explore ways to minimize and decrease burden as our mutual goal is to focus on improving patient care. Finally, in response to stakeholders' concerns regarding burden, and as discussed further below, we have decided not to finalize a number of the proposed standardized patient assessment data elements.

Comment: Several commenters expressed concern about the frequency of modifications to assessment items and measure calculation methods. Two commenters expressed concern that the frequency of modifications result in inconsistent data, making provider performance monitoring more difficult. One of these commenters also expressed concern that the frequency of modifications could adversely impact data reliability and validity, citing provider struggles with inconsistent data collection specifications, training materials, and feedback. Several commenters conveyed concern that providers have not had sufficient time to adjust to the volume of new data items and the frequency of modifications to the IRF QRP, including time to augment work flow processes, update data infrastructures, and train staff for changes to data collection requirements. One commenter acknowledged that implementation timeframe requirements are imposed by the IMPACT Act, but expressed that timeframe requirements do not allow sufficient time for successful implementation. One commenter requested that CMS use discretion and allow for phased implementation. One commenter recommended that CMS delay or suspend the implementation of new and previously finalized quality measures and patient assessment data elements until CMS provides evidence that standardized patient assessment data can be feasibly collected, and improves quality of care for patients. The commenter further recommended delay of the quality measures until CMS provides full support for the measures including training materials, data-collection specifications, and responses to provider questions.

Response: We appreciate commenters' feedback regarding concerns about frequent changes to quality measures and the inability to consistently monitor performance related to changes in IRF QRP quality measures over time. We note that we have implemented modifications in data items and calculation methods for previously finalized measures primarily to improve quality measure reliability and validity and to increase standardization across PAC settings. These changes are part of the phased approach CMS adopted to meet the IMPACT Act requirements. We recognize that frequent changes are disruptive and strive to avoid unnecessary measure and manual revisions. While we aim to avoid unnecessary changes, we acknowledge that modifying measures is an important part of the measure lifecycle to ensure measures are scientifically sound. We will further our monitoring and data evaluation efforts in order to ensure we limit the frequent modifications.

We also appreciate the feedback regarding the need for sufficient time to implement required changes. We are cognizant that all quality reporting processes are on-going and can take time to implement. We strive to provide sufficient training and education and advance notice of changes to support providers in adapting to changes. Regarding the recommendation that CMS delay or suspend the implementation of new and previously finalized quality measures and patient assessment data elements, below we discuss our decision to not finalize the majority of our proposals related to the reporting of standardized patient assessment data. With regard to previously finalized measures and data items, we wish to clarify that we have provided trainings, manuals, and ongoing Help Desk support to facilitate successful and accurate implementation by facilities.

1. Measuring and Accounting for Social Risk Factors in the IRF QRP

In the FY 2018 IRF PPS proposed rule (82 FR 20715), we discussed accounting for social risk factors in the IRF QRP. We stated that we consider related factors that may affect measures in the IRF 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 the Office of the Assistant Secretary for Planning and Evaluation (ASPE [3]) and the National Academies of Sciences, Engineering, and Medicine on the issue of measuring and accounting for social risk factors in CMS' quality measurement and payment 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 IRF PPS proposed rule (81 FR 52056), the NQF undertook 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 entailed temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. The trial has concluded and 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 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 IRF 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, in the FY 2018 IRF PPS proposed rule (82 FR 20715), we sought 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 sought 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 the commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the IRF 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 sought comment on operational considerations. We are committed to ensuring that 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.

We received several comments in response to our request for public comment on accounting for social risk factors in the calculation of measures adopted for the IRF QRP, which are summarized below.

Comment: Some commenters expressed appreciation for the agency's efforts and ongoing consideration of this issue. Commenters were generally supportive of accounting for social risk factors for IRF QRP quality measures. Some commenters stated that social risk factors are beyond the control of the facility and were concerned that without risk adjustment, differences in quality scores may reflect differences in patient populations rather than differences in quality, which may be misleading to patients, payers, and policy makers. Commenters also recommended incorporating the results of the ASPE's Report to Congress into consideration of adopting risk-adjustment strategies.

A few commenters, while acknowledging the influence of social risk factors on health outcomes, cautioned against adjusting for them in quality measurement due to the potential for unintended consequences. Several commenters expressed concern that adjusting for social risk factors may mask potential disparities and create disincentives to improve outcomes for vulnerable populations. Another commenter believes that social risk factors may be too subjective to adequately quantify and monitor over time.

Regarding the methodology for risk adjustment, some commenters made specific recommendations regarding the type of risk adjustment to be used. Several commenters endorsed risk stratification as a means of enabling providers to compare themselves to their peers and identify opportunities for improvement. MedPAC noted that the stratification approach of peer

[3] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[4] *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-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.

grouping of facilities would be straightforward to implement and would allow for shared social risk factors in a patient population to be considered without being dampened by other, non-social, individual patient characteristics. A few commenters drew attention to how adjustment should be conducted on a measure-specific basis, as different social risk factors affect different outcomes such as caregiver satisfaction and care delivery. Multiple commenters recommended further research into and testing of risk-adjustment methods.

One commenter expressed support for risk stratification, but only as a temporary solution while CMS continues to explore more robust risk adjustment factors. Another commenter suggested using multivariate regression analyses to determine the impact of various social risk factors on health outcomes and stated that the use of a composite measure framework will ensure that idiosyncrasies of patient populations are preserved.

In addition to expressing support for CMS's suggested categories of race/ethnicity, dual eligibility status, and geographical location, specific social risk factors suggested by commenters included: Availability of primary care and therapy services, access to food and medications, community resources, lack of personal resources, age, gender, comorbidities, education level, limited English proficiency, healthcare literacy, lack of adequate support system, living conditions including homelessness, and home access, unemployment, cognition, presence of pre-morbid assistance, and the presence and physical ability of a caregiver. While several commenters suggested the use of dual-eligibility status as an indicator, one commenter cautioned against its use because it takes neither community-based social risk factors associated with patient residence nor facility location into account. Another commenter suggested utilizing the Distressed Community Index compiled by the Economic Innovation Group.

A few commenters discussed confidential and public display of data adjusted for social risk factors. Many of these commenters advocated for initial confidential reporting of risk stratified performance to providers, and for the eventual public reporting of this information.

Other commenters recommended adjusting for social risk factors, specifically for resource use measures assessing potentially preventable readmissions, discharge to community, and Medicare spending per beneficiary. Several commenters recommended conducting additional testing and evaluating this on a measure by measure basis.

Response: As we have previously stated, 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. We believe that the path forward should incentivize improvements in health outcomes for disadvantaged populations while ensuring that beneficiaries have adequate access to excellent care. We will consider all suggestions as we continue to assess each measure and the overall program. We intend to explore options including but not limited to measure stratification by social risk factors in a consistent manner across programs, informed by considerations of stratification methods described in section IX.A.13 of the FY 2018 IPPS/LTCH PPS final rule. We appreciate the commenters for this important feedback and will continue to consider options to account for social risk factors that would allow us to view disparities and potentially incentivize improvement in care for patients and beneficiaries. We will also consider providing feedback to providers on outcomes for individuals with social risk factors in confidential reports.

C. Collection of Standardized Patient Assessment Data Under the IRF QRP

1. Definition of Standardized Patient Assessment Data

Section 1886(j)(7)(F)(ii) of the Act requires that for fiscal year 2019 (beginning October 1, 2018) and each subsequent year, IRFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. For purposes of meeting this requirement, section 1886(j)(7)(F)(iii) of the Act requires an IRF to submit the standardized patient assessment data required under section 1899B(b)(1) of the Act using the standard instrument in a time, form, and manner specified by the Secretary.

Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at least the quality measures described in section 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 (TPN);
- Medical conditions and co-morbidities 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 IRF admissions and discharges, but the Secretary may require the data to be reported more frequently.

In this final rule, we define the standardized patient assessment data that IRFs must report to comply with section 1886(j)(7)(F)(ii) 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 healthcare 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 healthcare providers to enable high quality care and outcomes through care coordination, as well as for quality measure calculations, and identifying comorbidities that might increase the medical complexity of a particular admission.

IRFs are currently required to report patient assessment data through the IRF–PAI 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/responses as data elements), 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 patient assessment data elements across IRFs which can then be used for a number of purposes, including IRF payment and measure calculation for the IRF QRP.

LTCHs, skilled nursing facilities (SNFs), and home health associations (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 IRF–PAI, 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 IRF–PAI cannot be readily compared with questions and response options that appear, for example, on the MDS, the PAC assessment instrument used by SNFs. This is true even when the questions and response options are similar. This lack of standardization across the four PAC providers 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 proposed to define ''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.

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, which may enhance provider and patient choice when selecting a post-acute care setting that will deliver the best outcome possible, and to inform payment models that take into account patient characteristics rather than setting, as described in the IMPACT Act.

We proposed to define ''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. We solicited comments on this proposal.

We did not receive any specific comments on the proposed definition.

Final Decision: We are finalizing as proposed our proposed definition of standardized patient assessment data.

2. General Considerations Used for the Selection of Standardized Patient Assessment Data

As part of our effort to identify appropriate standardized patient assessment data for purposes of collecting under the IRF 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.

D. Policy for Retaining IRF QRP Measures and Application of That Policy to Standardized Patient Assessment Data

In the CY 2013 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center (OPPS/ASC) Payment Systems and Quality Reporting Programs final rule (77 FR 68500 through 68507), we adopted a policy that allows any quality measure adopted for use in the IRF QRP to remain in effect until the measure is removed, suspended, or replaced. For further information on how measures are considered for removal, suspension, or replacement, please refer to the CY 2013 OPPS/ASC final rule (77 FR 68500). We proposed to apply this policy to the standardized patient assessment data that we adopt for the IRF QRP.

Comment: We received comments in support of our proposal to apply the existing policy for retaining IRF QRP quality measures to standardized patient assessment data.

Response: We appreciate the commenters' support.

Final decision: We are finalizing our proposal to apply the policy for retaining IRF QRP measures to standardized patient assessment data.

E. Policy for Adopting Changes to IRF QRP Measures and Application of That Policy to the Standardized Patient Assessment Data That We Adopt for the IRF QRP

In the CY 2013 OPPS/ASC final rule (77 FR 68500 through 68507), we adopted a subregulatory process to incorporate updates to IRF quality measure specifications that do not substantively change the nature of the measure. Under that policy, substantive changes to quality measures are proposed and finalized through rulemaking. For further information on what constitutes a substantive versus a non-substantive change and the subregulatory process we use to make non-substantive changes to measures, please refer to the CY 2013 OPPS/ASC final rule (77 FR 68500). We proposed that this policy would be applied to the standardized patient assessment data that we adopt for the IRF QRP.

Comment: One commenter supported our proposal to apply our current policy for updating measures to the standardized patient assessment data. One commenter supported the concept of non-substantive changes, but expressed concern that CMS did not provide examples specific to the standardized patient assessment data. The commenter recommended that CMS delay this proposal until it has engaged stakeholders to vet examples of non-substantive changes. One commenter had concerns about the subjectivity of what is considered substantive, and suggested that CMS consider increased burden and any change that makes it more difficult for IRFs to fulfill their data collection obligations. The commenter encouraged CMS to use the rulemaking process to give stakeholders an opportunity to comment and allow time for training and preparation.

Response: In the CY 2013 OPPS/ASC final rule (77 FR 68500), we listed examples of what we might generally regard as a non-substantive change to a quality measure in the IRF QRP, including but not limited to, updated diagnosis or procedure codes, medication updates for categories of medications, or a broadening of age ranges. We stated that we will continue to use rulemaking to adopt substantive updates. Examples of changes that we might generally consider to be substantive would include, but are not limited to: Those circumstances in which the changes are so significant that the measure is no longer the same measure; when a standard of performance assessed by a measure becomes more stringent (for example, changes in acceptable timing of medication; and NQF expansion of endorsement of a previously endorsed measure to a new setting, procedure/process, or test administration). We believe that many of these criteria would also apply to standardized patient assessment data. However, these and other changes would need to be evaluated on a case by-case basis to determine whether or not a change to a measure is in fact substantive.

Final Decision: After consideration of the public comments, we are finalizing our proposal to apply the policy for adopting changes to IRF QRP measures to the standardized patient assessment data that we adopt for the IRF QRP.

F. Quality Measures Currently Adopted for the IRF QRP

The IRF QRP currently has 18 currently adopted measures, as outlined in Table 7.

We received several comments about quality measures currently adopted for the IRF QRP, which are summarized and discussed below.

Comment: A few commenters expressed views regarding previously finalized readmission measures for the IRF QRP. A few commenters expressed concern over the performance categories used for public reporting, and one commenter opposed public reporting of the all-cause and PPR measures until an alternative approach for reporting could be developed.

Commenters recommended additional transparency regarding the statistical methods used for measure calculation and suggested that CMS make patient-level data available to providers for quality improvement efforts. Some commenters recommended ongoing testing and evaluation of the PPR definition, and one expressed concern over hospital DRG coding practices. We also received several comments suggesting that the PPR measures be adjusted for social risk factors.

Response: We refer commenters to the FY 2017 IRF PPS final rule (81 FR 52103 through 52111) for detailed responses that address concerns related to statistical methods used for calculating these measures, the PPR definition, and hospital coding practices, which were raised by these commenters. For the same reasons we expressed in that final rule, we continue to believe that the measure specifications are appropriate for these measures.

We appreciate the commenters' concerns over the performance categories used to publicly display the IRF QRP readmission measures and refer readers to section XIII.O of this final rule for responses to comments regarding this topic.

We refer readers to section XIII.B.1. of this final rule for responses to comments received related to social risk factors for the IRF QRP PPR measures.

Comment: A few commenters expressed views regarding Medicare Spending per Beneficiary—PAC IRF QRP, a measure previously finalized in the FY 2017 IRF PPS final rule (81 FR 52087 through 52095). Commenters addressed the risk-adjustment approach, accounting for social risk factors, NQF endorsement, and unintended consequences related to implementation of the measure. One commenter expressed concern that the measure was not NQF-endorsed. Several commenters encouraged CMS to utilize claims and patient assessment data to incorporate functional status into the risk-adjustment. Another commenter believed that the measure was confusing, and that patients and providers might incorrectly interpret it as a measure of quality rather than efficiency. The commenter expressed concern that PAC providers'

performance on this measure would focus on costs per patient, without fully accounting for patient outcomes, and that efficiency should not be based solely on the MSPB–PAC measures. This commenter also noted that this measure may result in limiting access to certain patients.

Response: We addressed these issues in the FY 2017 IRF PPS final rule (81 FR 52087 through 52095), and we refer the reader to that detailed discussion. We continue to believe that the measure specifications, including the risk-adjustment, are appropriate for this measure. With regard to comments related to accounting for social risk factors, we refer readers to section XIII.B.1 of this rule.

Comment: We received comments related to the Discharge to Community-PAC IRF QRP measure, a measure previously finalized in the FY 2017 IRF PPS final rule. Comments included suggestions to adjust for sociodemographic and socioeconomic risk factors, to exclude patients who died in the observation window following return to a community setting, to distinguish between a patient's return to home in the community versus home in a custodial nursing facility, and to assess reliability and validity of the claims discharge status code used to calculate the measure.

Response: We previously responded to comments on these topics in the FY 2017 IRF PPS final rule (81 FR 52095 through 52103); we refer readers to the FY 2017 IRF PPS final rule for a detailed response on these issues. In the FY 2018 IRF PPS proposed rule (82 FR 20721), we sought comment on the exclusion of baseline nursing facility residents as a potential future modification of the Discharge to Community-PAC IRF QRP measure. We refer readers to section XIII.I of this rule for a discussion of this issue. With regard to comments related to social risk factors, we refer readers to section XIII.B.1 of this final rule.

TABLE 7—QUALITY MEASURES CURRENTLY ADOPTED FOR THE IRF QRP

Short name	Measure name and data source
IRF–PAI	
Pressure Ulcers	Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678).
Patient Influenza Vaccine	Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short Stay) (NQF #0680).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).*
Application of Functional Assessment.	Application of Percent of LTCH Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).*
Change in Self-Care	IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).**
Change in Mobility	IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).**
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).**
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).**
DRR	Drug Regimen Review Conducted with Follow-Up for Identified Issues–PAC IRF QRP.*
NHSN	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure (NQF #0138).
MRSA	NHSN Facility-Wide Inpatient Hospital-Onset Methicillin-Resistant Staphylococcus aureus (MRSA) Bacteremia Outcome Measure (NQF #1716).
CDI	NHSN Facility-wide Inpatient Hospital-Onset Clostridium difficile Infection (CDI) Outcome Measure (NQF #1717).
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431).
Claims-based	
All-Cause Readmissions	All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs (NQF #2502).
MSPB	Medicare Spending per Beneficiary (MSPB)–PAC IRF QRP.*
DTC	Discharge to Community–PAC IRF QRP.*
Potentially Preventable Readmissions (PPR) 30 day.	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.*
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs.*

* Not currently NQF-endorsed for the IRF setting.
** In satisfaction of section 1899B(c)(1) of the Act quality measure domain: functional status, cognitive function, and changes in function and cognitive function domain.

G. IRF QRP Quality Measures Beginning With the FY 2020 IRF QRP

In the FY 2018 IRF PPS Proposed Rule (82 FR 20718 through 20720), we proposed that beginning with the FY 2020 IRF QRP, in addition to the quality measures we are retaining under our policy described in section XIII.F. of this final rule, we will 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 replace it with a modified version of the measure entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury. We also proposed 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 IRFs under the IRF QRP through the IRF–PAI.

1. Replacing 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

a. Measure Background

In the FY 2018 IRF PPS proposed rule (82 FR 20717 through 20720), we proposed 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 IRF 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 IRF 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 proposed modified version of the measure also contains updated specifications intended to eliminate redundancies in the assessment items needed for its calculation and to reduce the potential for underestimating the frequency of pressure ulcers. The modified version of the measure would satisfy the IMPACT Act domain of skin integrity and changes in skin integrity.

b. Measure Importance

As described in the FY 2012 IRF PPS final rule (76 FR 47876 through 47878), 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 IRF QRP, we refer readers to the FY 2012 IRF PPS final rule (76 FR 47876 through 47878) and the FY 2014 IRF PPS final rule (78 FR 47911 through 47912).

We proposed 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]

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.[15] This analysis examined the national incidence of new unstageable pressure ulcers in IRFs at discharge compared with admission using IRF discharges from January through December 2015. The contractor found a national incidence of 0.14 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 0.26 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.[16] The study found DTIs increased by three fold, to 9 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.

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 IRFs. 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 2016 reveals that the IRF mean score is 0.64 percent and the 25th and 75th percentiles are 0 percent and 0.95 percent, respectively. In the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, during the same timeframe, the IRF mean score is 1.46 percent and the 25th and 75th percentiles are 0 percent and 2.27 percent, respectively.

c. 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 quality measure, including the feasibility of implementing the proposed measure's updates 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 also supported the use of different data elements for measure calculation. 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

[6] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' Nurs NZ 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 BM. 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 Management 59(9).

[14] Posthauer, ME, 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] Final Specifications for IRF QRP Quality Measures and Standardized Patient Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

[16] VanGilder, C, MacFarlane, GD, 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.

November 15, 2013, which had recommended that we update the specifications for the pressure ulcer measure to include unstageable pressure ulcers in the numerator.[17] [18] Exploratory 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, non-removable dressing/device, and DTIs in the quality measure. Other commenters did not support the inclusion of DTIs in the quality measure because they stated that there is no universally accepted definition for this type of skin injury.

Some commenters provided feedback on the data elements used to calculate the proposed quality measure. We believe that these data elements will promote facilitation of cross-setting quality comparison as mandated by the IMPACT Act, alignment between quality measures and payment, reduction in redundancies in assessment items, and prevention of inappropriate underestimation of pressure ulcers. The currently implemented pressure ulcer measure is calculated using retrospective data elements that assess the number of new or worsened pressure ulcers at each stage, while the proposed measure is calculated using the number of unhealed pressure ulcers at each stage after subtracting the number that were present upon admission. Some commenters did not support the data elements that would be used to calculate the proposed measure and requested further testing of these data elements. Other commenters supported the use of these data elements, stating that these data elements simplified the measure calculation process.

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.

The NQF-convened Measures Application Partnership (MAP) Post-Acute Care/Long-Term Care (PAC/LTC) Workgroup met on December 14 and 15, 2016, and the MAP Coordinating Committee met on January 24 and 25, 2017, and provided input to CMS about this proposed measure. The MAP provided a recommendation of ''conditional support for rulemaking'' for use of the proposed measure in the IRF QRP. The MAP's conditions of support include that, as a part of measure implementation, we 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 we 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 IRFs 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 IRF setting. Therefore, based on the evidence discussed above, we proposed to adopt the quality measure entitled, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for the IRF QRP beginning with the FY 2020 IRF QRP. We plan to submit the proposed measure to the NQF for endorsement consideration as soon as feasible.

d. Data Collection

The data for this quality measure will be collected using the IRF–PAI, which is currently submitted by IRFs through the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) System. The proposed standardized patient assessment admission and discharge data applicable to this measure that must be reported by IRFs for patients discharged on or after October 1, 2018 are described in section XII.K of this final rule. 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 on the IRF–PAI. In addition, our proposal to eliminate duplicative data elements that are used in the calculation of the current pressure ulcer measure will result in an overall reduced reporting burden for IRFs for the proposed measure. To view the updated IRF–PAI, with the changes, we refer the reader to *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF-QRP-Manual.html.* For more information on IRF–PAI submission using the QIES ASAP System, we refer readers to *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRFPAI.html* and *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/index.html.*

For technical information about this 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, Final Specifications for IRF QRP Quality Measures and Standardized Patient

[17] 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 at *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.*

[18] 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 at *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.*

Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

We proposed that IRFs would begin reporting the pressure ulcer measure Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury with data collection beginning October 1, 2018.

We invited 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, for the IRF QRP beginning with the FY 2020 IRF QRP.

We received several comments about this proposal, which are summarized below.

Comment: Many commenters supported the proposed replacement of the current pressure ulcer measure, the 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. Commenters appreciated that the implementation of this modified measure will reduce burden for providers by eliminating redundancies in the assessment items needed for its calculation, as well as reduce the potential for underestimating the frequency of pressure ulcers. Commenters recognized that the proposed measure will meet the requirements of the IMPACT Act for the Skin Integrity and Changes in Skin Integrity domain.

Response: We appreciate the commenters' support 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 the measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury to fulfill the requirements of the IMPACT Act. We agree that this proposal will limit regulatory burden and promote high quality care, as the commenters describe.

Comment: Several commenters raised questions about the rationale for adopting the proposed measure. One commenter inquired how the proposed measure is a more appropriate way to identify skin changes.

Response: The proposed measure includes new or worsened unstageable pressure ulcers, including deep tissue injuries (DTIs), in the measure numerator. These types of pressure ulcers are important to include in the measure because they represent poor outcomes, are often an avoidable outcome of medical care, are debilitating and painful, and can result in death and/or disability. The decision to include unstageable pressure ulcers, including DTIs was supported by TEPs held in 2013 and 2016, and closes a gap in quality reporting. Therefore, we believe that the proposed measure offers an improved measure of quality when compared to the current pressure ulcer measure.

Comment: Several commenters requested that additional testing analyses be conducted prior to the implementation of this measure. These commenters indicated that the purpose of this additional testing should be to verify that the specifications of this measure reflect actual differences in the care practices and the quality of care provided by IRFs, rather than differences in compliance. Specifically, some commenters expressed concerns that the variation in measure scores between facilities could reflect differences in the interpretation of definitions for unstageable pressure ulcers or DTIs, rather than actual differences in quality or care practices. These commenters noted that a measure should not be changed to create performance variation, but rather to be consistent with current science or to provide clarity and consistent data collection.

One commenter pointed out the difference in scores between the current and proposed measures, and questioned whether the proposed measure can be considered valid since it produces different scores. One commenter indicated concern that the proposed measure may quickly become ''topped-out'' since the rate of patients with new or worsened pressure ulcers is low.

Some commenters stated that analysis related to development of the proposed measure has not been made publicly available. A few other commenters suggested that the specifications of the proposed measure are based on data from SNFs, rather than IRFs. Another commenter suggested that CMS conduct an independent medical record review to support the data elements used in calculation of the measure.

Response: We have performed testing to compare the performance of the proposed measure with the existing pressure ulcer/injury measure. Current findings indicate that the measure is both valid and reliable in the SNF, LTCH, and IRF settings. One of the differences between the current and proposed pressure ulcer measures is that the proposed measure is calculated using the M0300 data element. Reliability and validity of the M0300 data element used to calculate this quality measure have been tested in several ways. Rigorous testing on both reliability and validity of the data elements in the MDS 3.0 provides evidence for the data elements used in the SNF, LTCH, and IRF settings.[19] The MDS 3.0 pilot test showed good reliability, and the results are applicable to the IRF–PAI as well as the LTCH CARE Data Set because the data elements tested are the same as those used in the IRF–PAI and LTCH CARE Data Set. Across pressure ulcer data elements, average gold-standard to gold-standard kappa statistic was 0.905. The average gold-standard to facility-nurse kappa statistic was 0.937. These kappa scores indicate ''almost perfect'' agreement using the Landis and Koch standard for strength of agreement.[20] Analyses conducted by the measure development contractor indicate that there is a high level of alignment between the M0300 data element and the M0800 data element, suggesting that the data elements assess an equivalent concept. Using the M0300 data elements improves accuracy by establishing a standardized calculation method.

A second main difference between the current and proposed pressure ulcer measures is that the proposed measure includes unstageable pressure ulcers, including DTIs, in the numerator of the quality measure, resulting in increased scores in all settings, compared with the previously implemented pressure ulcer measure. This is due to the fact that the proposed measure includes unstageable pressure ulcers, including DTIs, while the current measure does not, as well as the fact some pressure ulcers captured as new or worsened in the M0300 data element were not reported in the M0800 data element. By including pressure ulcers that were not included in the numerator of the current pressure ulcer measure, the scores on the proposed measure are higher and the risk of the measure being ''topped-out'' are lower.

To assess the construct validity of this measure, or the degree to which the measure construct measures what it claims or purports to be measuring, our

[19] 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.*

[20] Landis, R., & Koch, G. (1977, March). The measurement of observer agreement for categorical data. Biometrics 33(1), 159–174.

measure contractor sought input from TEPs over the course of several years. Most recently, on July 18, 2016, a TEP supported the inclusion in the numerator of unstageable pressure ulcers due to slough and/or eschar that are new or worsened, new unstageable pressure ulcers/injuries due to a non-removable dressing or device, and new DTIs. The measure testing activities were presented to TEP members for their input on the reliability, validity, and feasibility of this measure change. The TEP members supported the measure construct.

The proposed measure also increased the variability of measures scores between providers, as noted by some commenters. In the currently implemented pressure ulcer measure, analysis using 2016 data from Quarter 4 reveals that the IRF mean score is 0.64 percent and the 25th and 75th percentiles are 0 percent and 0.95 percent, respectively. In the proposed measure, during the same timeframe, the IRF mean score is 1.46 percent and the 25th and 75th percentiles are 0 percent and 2.27 percent, respectively. We would like to clarify that the goal of the proposed measure is not to create performance variation where none exists, but rather to better measure existing performance variation. This increased variability of scores between facilities will improve the ability of the measure to distinguish between high- and low-performing facilities. In addition to the analyses presented in this rule and the measure specifications,[21] we presented analyses supporting this measure in a letter submitted to the NQF MAP Coordinating Committee as part of their review of this measure. These analyses were included in MAP public comments and are publicly available.[22]

We will continue to perform reliability and validity testing in compliance with NQF guidelines and the Blueprint for the CMS Measures Management System to ensure that that the measure demonstrates scientific acceptability (including reliability and validity) and meets the goals of the QRP. Finally, as with all measure development and implementation, we will provide training and guidance prior to implementation of the measure to promote consistency in the interpretation of the measure.

Comment: Several commenters requested further training and guidance in completing the M0300 data element that will be used to calculate the proposed quality measure. Some commenters requested comprehensive guidance on completing the ''present on admission'' data element. A few comments indicated a belief that the data element used to calculate this measure would be new, and one included incorrect information about the M0300 data element. Some commenters supported the proposed measure calculation approach, which will not count pressure ulcers that were present at the time of admission at the same stage, but stated that this would add complexity in coding and would require further training. Some commenters stated that the modified measure may be difficult for providers to capture because they are requested to report on a different data element, and some stated that this may decrease the accuracy of documentation. One commenter stated that there may be misinterpretations of how to code the assessment data element, or operational or documentation issues that affect a facility's documentation of pressure ulcers that are present on admission. Some commenters indicated that the definition of pressure ulcers included in the measure is too subjective. One commenter requested that the proposed measure be delayed until the assessment items have been collected for 12 to 24 months. One commenter stated that the MAP's conditions of support for this measure have not been met.

Response: The measure will be calculated using data reported on the M0300 data element collected at discharge, which only requires IRFs to report the number of pressure ulcers for each stage (including stages 2, 3, and 4, unstageable due to slough and/or eschar, unstageable due to non-removable dressing/device, and DTIs), and of those, the number that were present on admission.

The M0300 data element currently exists on the IRF–PAI, and the current IRF–PAI Manual, as well as prior versions of the Manual, include guidance about how to complete the M0300 data element, including the assessment and coding of pressure ulcers that are present on admission. We will provide further training, education, and guidance prior to implementation of the proposed measure. The IRF–PAI Manual will be updated with additional examples to further address the coding of unstageable pressure ulcers, and to provide further clarification on the coding of pressure ulcers/injuries that are ''present on admission.'' The IRF–PAI Manual can be found at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF–QRP-Manual.html.* We believe that these additional training opportunities, combined with ongoing monitoring and analysis of the measure, fulfill the conditions of support outlined by the MAP.

Comment: We received several comments regarding the inclusion of unstageable pressure ulcers in the proposed measure. One commenter supported the modification of this measure. Other commenters did not support the inclusion of unstageable pressure ulcers in the quality measure as proposed, and encouraged further testing. Some commenters stated that there is a lack of clear definition of pressure ulcers included in this measure, and that those definitions may be too subjective to get reliable data. Commenters also requested that we provide training opportunities and educational materials prior to the implementation of this measure.

Response: We appreciate the support we have received regarding the inclusion of unstageable pressure ulcers, including DTIs, in the proposed quality measure. We believe that the inclusion of unstageable pressure ulcers in the measure will result in a fuller picture of quality to patients and families, and lead to further quality improvement efforts that will advance patient safety by reducing the rate of facility-acquired pressure ulcers at any stage.

We would like to clarify that the definitions of pressure ulcers are adapted from the National Pressure Ulcer Advisory Panel (NPUAP) and are standardized across all PAC settings. These definitions are universally accepted, objective, and considered to be the gold-standard definition by national and international stakeholders such as the NPUAP, European Pressure Ulcer Advisory Panel (EPUAP), Wound, Ostomy and Continence Nurses Society (WOCN), amongst others. As a result, the use of these universally accepted definitions of pressure ulcers furthers our commitment to ensuring that all quality measures implemented in the QRP meet the testing goals of the QRP.

To provide greater clarity about the definitions of different types of unstageable pressure ulcers and how to code them on the IRF–PAI, we are currently engaged in multiple educational efforts. These include training events, updates to the manuals and training materials, and responses to Help Desk questions to promote

[21] Final Specifications for IRF QRP Quality Measures and Standardized Patient Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

[22] *http://public.qualityforum.org/MAP/MAP%20Coordinating%20Committee/CMS%20Public%20Comment%2012-22.pdf.*

understanding and proper coding of these data elements. We will continue to engage in these training activities prior to implementation of the proposed measure.

Comment: We received few comments regarding the inclusion of DTIs specifically. Some commenters did not support the inclusion of DTIs in the measure. Commenters stated that there is not a universally accepted definition of DTIs, and that DTIs are commonly misdiagnosed, which could lead to surveillance bias. One commenter stated that it is often difficult to determine the presence of a DTI at admission and many are not identifiable until a week or two after admission.

Response: We appreciate the comments regarding the inclusion of DTIs in the proposed quality measure. DTIs are often an avoidable outcome of medical care, are debilitating and painful, and can result in death and/or disability, similar to Stage 2, Stage 3 and Stage 4 pressure ulcers. While some DTIs may worsen, studies indicate that many DTIs, if managed using appropriate care, can be resolved without deteriorating into a worsened pressure ulcer. Therefore, we believe that the inclusion of DTIs in the proposed quality measure is essential to be able to accurately reflect the number of these types of pressure injuries and to provide the appropriate patient care. Further, we believe that it is important to do a thorough assessment on every patient in each PAC setting, including a thorough skin assessment documenting the presence of any pressure ulcers or injuries of any kind, including DTIs. We agree that it is important to conduct thorough and consistent assessments to avoid the possibility of surveillance bias.

When considering the addition of DTIs to the measure numerator, we convened cross-setting TEPs in June and November 2013, and obtained input from clinicians, experts, and other stakeholders. An additional cross-setting TEP convened by our measure development contractor in July 2016 also supported the recommendation to include unstageable pressure ulcers, including DTIs, in the numerator of the quality measure. Given DTIs' potential impact on mortality, morbidity, and quality of life, it may be detrimental to the quality of care to exclude DTIs from a pressure ulcer quality measure.

Comment: Several commenters recommended that CMS attain NQF endorsement of the Changes in Skin Integrity Post- Acute Care: Pressure Ulcer/Injury measure prior to implementation.

Response: While this measure is not currently NQF-endorsed, we recognize that the NQF endorsement process is an important part of measure development and we plan to submit this measure for NQF endorsement consideration as soon as feasible.

Comment: We received several comments regarding the use of the term ''pressure injury.'' Some comments received were in support of adapting the NPUAP terminology. Other commenters stated that the proposed measure does not align with the NPUAP standard. One commenter requested that staging definitions be updated to match the NPUAP standard, and that the category of pressure ulcers that are unstageable due to non-removable dressing/device be removed.

Response: We appreciate the feedback regarding the terminology used in the Changes in Skin Integrity Post- Acute Care: Pressure Ulcer/Injury measure. The terminology and definitions developed by the NPUAP for the care of pressure ulcers are often used to inform the PAC patient and resident assessment instruments and corresponding assessment manuals. The pressure ulcer definitions used in the IRF–PAI Training Manual have been adapted from those recommended by the NPUAP 2007 Pressure Ulcer Stages.

Considering the recent updates made by the NPUAP to their Pressure Ulcer Staging System, we intend to continue the adaptation of NPUAP terminology for coding the patient and resident assessment instruments. The updated NPUAP guidance was discussed by a TEP in December 2016, and the TEP recommended we maintain current guidance for staging pressure ulcers, despite some differences from NPUAP staging definitions.

We are aware of the array of terms used to describe alterations in skin integrity due to pressure. Some of these terms include: pressure ulcer, pressure injury, pressure sore, decubitus ulcer, and bed sore. However, for purposes of the proposed measure, a skin condition should be coded on the IRF–PAI as a pressure ulcer if the primary cause of the skin condition is related to pressure. For example, if the medical record reflects the presence of a Stage 2 pressure injury, it should be coded on the assessment as a Stage 2 pressure ulcer.

Comment: We received some comments related to burden associated with this pressure ulcer measure. One commenter supported CMS's efforts to implement this measure as it may reduce the burden of collecting assessment data. Other commenters noted that there have been multiple changes to the current pressure ulcer quality measure over the years, and indicated that those changes, in addition to the current proposal, place a burden on providers by requiring further training or education. One commenter noted a burden on software developers. Commenters recommended that CMS suspend or delay implementing the proposed measure.

Response: While we avoid making unnecessary changes to measures, modifying measures is an important part of the measure lifecycle to ensure measures that are reliable, valid, and scientifically sound. We do not believe that the reporting of the proposed measure will impose a new burden on IRFs because the measure is calculated using data elements that are currently included in IRF–PAI. Further, our proposal to remove duplicative data elements will result in an overall reduced reporting burden for providers for the proposed measure.

Comment: One commenter noted that there is a difference in the denominator across settings in terms of which payer sources (Medicare Part A or Medicare Advantage) are included in the measure. Commenters recommended that we ensure that common denominators are used when displaying this measure for quality comparison purposes. Another commenter requested clarification on measure specification differences between IRFs and other PAC settings. Some commenters stated that there is an IMPACT Act mandate to implement ''interoperable measures'' across PAC settings.

Response: We recognize that data is currently collected from different payer sources for each PAC setting. We believe that quality care is best assessed through the collection of data from all patients, and strive to include the largest possible patient population in the measure denominator. For this reason, we do not seek to limit the denominator in each setting based on the data currently available in other settings (that is, limiting every setting denominator to Medicare Part A patients). Regarding the concern that different patient population denominators are misleading to consumers and providers, we seek to clarify the intent and use of this quality measure through rulemaking, provider training, and ongoing communication with stakeholders. Ongoing communication includes the posting of measure specifications and communication accompanying public reporting. Further, we will take into consideration the expansion of the SNF QRP to include all payer sources through future rulemaking.

The Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure is harmonized across all PAC settings and uses standardized patient assessment data as required by the IMPACT Act. Further, we would like to clarify that the M0300 data element used to calculate this measure is standardized across all PAC settings, enabling interoperability. This standardization and interoperability of patient assessment data elements allow for the exchange of information among PAC providers and other providers to whom this data is applicable. We refer readers to the measure specifications, which describe the specifications for the measure in PAC settings, Final Specifications for IRF QRP Quality Measures and Standardized Patient Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.*

Comment: A few commenters noted that IRF performance scores on the proposed measure are likely to differ from performance scores on the currently implemented pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678). The commenters recommended development of educational materials for the public to explain the perceived shifts in performance. One commenter stated that changes to the measure can make it difficult for IRFs to review and improve their performance. One commenter expressed concern that, since this measure will be publicly reported, it may impact case-mix development or provider reimbursement.

Response: We appreciate commenters' concerns about differences in performance scores between the two measures, and the possibility of misinterpretation. While the proposed measure will not be directly comparable to the existing measure, it is expected to provide an improved measure of quality moving forward since it will more accurately capture the number of new and worsened pressure ulcers and include unstageable pressure ulcers. Further information and training will be provided to providers as well as consumers regarding how to interpret scores on the proposed measure, to avoid any possible confusion between the proposed measure and the existing measure. We would like to clarify for the IRF QRP, APU determination is not predicated on performance results for the measures.

Comment: We received one comment recommending the addition of morbid obesity as a risk adjustor for this quality measure.

Response: The proposed quality measure would be risk adjusted for functional mobility admission performance, bowel continence, diabetes mellitus or peripheral vascular disease/peripheral arterial disease, and low body mass index in each of the four settings. This risk adjustment methodology is described further in the Specifications for IRF QRP Quality Measures and Standardized Patient Assessment Data Elements, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.* As with our measure modification and evaluation processes, we will continue to analyze this measure, specifically assessing the addition of variables to the risk adjustment model, and testing the inclusion of other risk factors as additional risk adjustors. This continued refinement of the risk adjustment models will ensure that the measure remains valid and reliable to inform quality improvement within and across each PAC setting, and to fulfill the public reporting goals of quality reporting programs.

Comment: Some commenters requested that CMS maintain the M0900 data element, which captures healed pressure ulcers, on the IRF–PAI. The commenters stated that IRFs heal many pressure ulcers and it is clinically valuable to monitor these positive outcomes. One commenter requested that CMS add three additional items to address healed unstageable pressure ulcers due to slough or eschar, healed unstageable pressure ulcers/injuries due to non-removable dressing or device, and healed DTIs. This commenter recommended that CMS consider developing a pressure ulcer quality measure that tracks the rate of healed pressure ulcers in addition to the rate of new or worsened wounds.

Response: We appreciate the suggestion for additional quality of care measures. We are responsible for continuously evaluating existing quality reporting programs and identifying potential new measures. We will take this suggestion into consideration as we continue our evaluation and refinement of skin integrity quality measures for PAC settings.

Comment: One commenter indicated that IRFs should not be required to report late stage pressure ulcers because these pressure ulcers are rare events during IRF stays.

Response: We agree that new or worsened stage 3 or 4 pressure ulcers are rare events in IRFs. Pressure ulcers interfere with activities of daily living and functional gains made during rehabilitation, predispose patients to osteomyelitis and septicemia, and are strongly associated with longer hospital stays, longer IRF stays, and mortality.[23] [24] [25]Analysis conducted by our measure development contractor examined the national incidence of new or worsened Stage 2, 3, or 4 pressure ulcers in IRFs at discharge compared with admission using discharges from January through December 2015. In IRFs, we found a national incidence of 0.56 percent of new or worsened Stage 2 pressure ulcers, 0.09 percent of new or worsened Stage 3 pressure ulcers, and 0.01 percent of new or worsened Stage 4 pressure ulcers. This indicates that, while the rates of stage 3 or stage 4 pressure ulcers are low, there are still some stage 3 or 4 pressure ulcers developing in IRFs. Overall, we believe it is important to continue to collect information on these types of pressure ulcers because of the serious nature of this medical condition.

Final Decision: After consideration of the public comments we received, we are finalizing our proposal 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 IRF QRP and to replace it with a modified version of that measure, entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for the IRF QRP with an implementation date of October 1, 2018.

H. Removal of the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge From IRFs From the IRF QRP

In the FY 2018 IRF PPS proposed rule (82 FR 20720), we proposed to remove the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) beginning with the FY 2019 IRF QRP.

In the FY 2016 IRF PPS final rule (80 FR 47087 through 47089), we adopted the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) for the IRF QRP.

[23] 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.

[24] Park-Lee E, Caffrey C. Pressure ulcers among nursing home residents: United States, 2004 (NCHS Data Brief No. 14). Hyattsville, MD: National Center for Health Statistics, 2009. Available from *http://www.cdc.gov/nchs/data/databriefs/db14.htm.*

[25] Wang, H., et al. (2014). ''Impact of pressure ulcers on outcomes in inpatient rehabilitation facilities.'' Am J Phys Med Rehabil 93(3): 207–216.

This measure assesses all-cause unplanned hospital readmissions from IRFs. In the FY 2017 IRF PPS final rule (81 FR 52103 through 52108), we adopted the Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP to fulfill IMPACT Act requirements. We also adopted the Potentially Preventable Within Stay Readmission Measure for IRFs (81 FR 52108 through 52111) for the IRF QRP. In response to the FY 2017 IRF PPS proposed rule, we received public comments expressing concern over the multiplicity of readmission measures and the overlap between the All-Cause Readmission and Potentially Preventable Readmission (PPR) 30-Day Post-Discharge measures (see 81 FR 52106; 81 FR 52109 through 52111). Commenters also commented that multiple readmission measures would create confusion and require additional effort by providers to track and improve performance.

We retained the All-Cause Readmission measure because it would allow us to monitor trends in both all-cause and PPR rates. In particular, we could compare facility performance on the All-Cause Readmission and PPR 30-Day Post-Discharge measures. However, upon further consideration of the public comments, we believe that removing the All-Cause Readmission measure and retaining the PPR 30-Day Post-Discharge measure in the IRF QRP would prevent duplication, because potentially preventable readmissions are a subset of all-cause readmissions. Although there is no data collection burden associated with these claims-based measures, we recognize that having 3 hospital readmission measures in the IRF QRP may create confusion. We also agree with commenters who preferred the PPR measures, which identify a subset of all-cause readmissions, because we believe the PPR measures will be more actionable for quality improvement.

Accordingly, we proposed to remove the All-Cause Readmission measure beginning with the FY 2019 IRF QRP. We proposed that public reporting of this measure would end by October 2018 when public reporting of the PPR 30-Day Post-Discharge and PPR Within Stay measures begins by October 2018. We refer readers to section XIII.O of this final rule for more information regarding public reporting for the PPR 30-Day Post Discharge and PPR Within Stay measures. We refer readers to the PPR 30-Day Post-Discharge and PPR Within Stay measure specifications available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Downloads/Measure-Specifications-for-FY17-IRF-QRP-Final-Rule.pdf.*

We invited public comment on our proposal to remove the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502) from the IRF QRP, beginning with the FY 2019 IRF QRP. We received several comments, which are summarized below.

Comment: Several commenters, including MedPAC, supported the proposed removal of the All-Cause Readmission measure from the IRF QRP. The commenters supported the PPR measures over the All-Cause Readmission measure, which hold providers accountable for a subset of all-cause readmissions that are considered potentially preventable.

Some commenters were concerned that three hospital readmission measures in the IRF QRP is burdensome and supported the removal of the All-Cause Readmission measure because they consider it confusing and duplicative of the PPR 30-Day Post-Discharge measure. Commenters expressed concern that a lack of patient-level data makes it difficult to track and improve performance. Some commenters suggested that CMS evaluate PAC readmission measures adopted for other quality reporting programs to ensure that they create consistent incentives across the system.

Response: We appreciate the support for the proposed removal of the All-Cause Readmission measure from the IRF QRP. We note commenters' concerns regarding the availability of patient-level data for tracking and improving performance, and are exploring the feasibility of making additional data available to IRFs. We appreciate commenters' concern over consistent incentives and will continue to monitor PAC readmission measures to ensure they align incentives across the system.

Final Decision: After consideration of the public comments, we are finalizing our proposal to remove the All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs from the IRF QRP, beginning with the FY 2019 IRF QRP.

I. IRF QRP Quality Measures under Consideration for Future Years

We invited public comment on the importance, relevance, appropriateness, and applicability of each of the quality measures listed in Table 8 for future years in the IRF QRP.

We solicited public comments on the use of survey-based experience of care measures for the IRF QRP. We are currently developing an experience of care survey for IRFs, and survey-based measures will be developed from this survey. These survey-based measures may be considered for inclusion in the IRF QRP through future notice-and-comment rulemaking. This survey was developed using a rigorous survey development methodology that included a public request for measures (refer to Request for Information To Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences With Care Received in Inpatient Rehabilitation Facilities, at 80 FR 72726 through 72727); focus groups and interviews with patients, family members, and caregivers; input from a TEP of IRF providers, researchers, and patient advocates; and cognitive interviewing. The survey has also been field tested. The survey explores experience of care across five main areas: (1) Beginning stay at the rehabilitation hospital/unit; (2) interactions with staff; (3) experience during the rehabilitation hospital/unit stay; (4) preparing for leaving the rehabilitation hospital/unit; and (5) overall rehabilitation hospital/unit rating. We are specifically interested in comments regarding survey implementation and logistics, use of the survey-based measures in the IRF QRP, and general feedback. We are also considering a measure focused on pain that relies on the collection of patient-reported pain data.

We received several comments on measures under considerations for future years, which are summarized below.

Comment: In the FY 2018 IRF PPS proposed rule (82 FR 20720 through 20721), we requested stakeholder feedback on the use of an experience of care survey in the IRF setting. CMS received several comments about the IRF survey currently in development. Some commenters raised the importance of including questions about experience with various types of rehabilitative therapy and the ability of the IRF to help meet patients' goals. Other commenters were concerned with response rates and burden. The commenters suggested ways to increase response rate and lessen burden, such as with electronic or mobile survey administration options and reducing the number of survey questions. Several commenters wanted more information about the survey to be made public and for CMS to ensure that stakeholder feedback is taken into account as the survey is finalized. One commenter questioned about subdividing survey respondents into diagnosis groups to allow for a more granular level of analysis.

Response: We appreciate the comments about the IRF Experience of Care Survey. We will take those comments into consideration as we finish developing the survey and related survey-based measures.

Comment: We received several comments about the Application of Percent of Residents Who Self-Report Moderate to Severe Pain (Short Stay) (NQF #0676) measure. Many commenters did not support this measure's inclusion in the IRF QRP because of the intensive nature of therapy in IRFs may cause patients to experience some degree of pain and discomfort. Commenters expressed concern that inquiring about pain does not provide enough information about whether the pain was treated or the patient's quality of life improved as a result of pain management, and suggested a measure that assessed whether staff responded to and helped manage pain instead. Many commenters had concerns about opioid over-prescription as a result of inquiring about pain, citing CMS's Opioid Misuse Strategy 2016, which can be found at *https://www.cms.gov/Outreach-and-Education/Outreach/Partnerships/Downloads/CMS-Opioid-Misuse-Strategy-2016.pdf.* Some commenters supported a measure related to pain, as it could prevent participation in rehabilitation and daily activities, and one commenter suggested an additional measure to capture this issue for non-verbal patients. One commenter supported that the measure could be collected as a patient reported outcome.

Response: We appreciate the comments pertaining to the Application of Percent of Residents Who Self-Report Moderate to Severe Pain (Short Stay) (NQF #0676) measure under consideration for future implementation in the IRF QRP. We note that appropriately assessing pain as an outcome is important, and will take into consideration the commenters' recommendations.

Comment: We received several other comments with recommendations for future measures. One commenter suggested CMS align any future measures across all post-acute care settings. One commenter suggested measures assessing patient and family goals and introducing palliative care, and recommended expanding measures related to mobility and self-care. One commenter suggested including more immunization measures such as a pneumococcal quality measure.

Response: We appreciate the commenters' recommendations and will take all their suggestions into consideration.

1. IMPACT Act Measure—Possible Future Update To Measure Specifications

In the FY 2017 IRF PPS final rule (81 FR 52095 through 52103), we finalized the Discharge to Community-PAC IRF QRP measure, which assesses successful discharge to the community from an IRF setting, with successful discharge to the community including no unplanned rehospitalizations and no death in the 31 days following discharge from the IRF. We received public comments (see 81 FR 52098 through 52099), recommending exclusion of baseline nursing facility residents from the measure, as these residents did not live in the community prior to their IRF 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 IRF QRP measure, which would exclude baseline nursing facility residents from the measure. We invited public comment on the possible exclusion of baseline nursing facility residents from the Discharge to Community-PAC IRF QRP measure in future years of the IRF QRP.

We received several comments on this potential future modification, which are summarized below.

Comment: Multiple commenters expressed support for excluding baseline nursing facility residents from the discharge to community measure as a potential future measure modification. Commenters stated that this exclusion would result in the measure more accurately portraying quality of care provided by IRFs, while controlling for factors outside of IRF control. One commenter emphasized that the proposed exclusion be applied across all PAC settings for cross-setting measure standardization and quality comparisons. One commenter supported this exclusion, and suggested that CMS try to address needs of long-term nursing facility residents in quality reporting programs via other strategies and not wholly exclude them from a nursing facility's accountability. One commenter stated that we are considering excluding patients admitted to IRF from a skilled nursing facility setting.

Response: We appreciate the support for the potential exclusion of baseline nursing facility residents as a future measure modification. We will consider these views and determine whether to propose to exclude baseline nursing facility residents from the Discharge to Community-PAC IRF QRP measure in future years of the IRF QRP. We would like to clarify that we are only considering exclusion of baseline long-term nursing facility residents from the measure. We are not considering exclusion of patients admitted to IRF from a SNF setting.

2. 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 engaged in additional development work, including performing additional testing, for two measures that would satisfy the domain of accurately communicating the existence of and providing for the transfer of health information and care preferences in section 1899B(c)(1)(E) of the Act. The measures under development are: (1) Transfer of Information at Post-Acute Care Admission, Start or Resumption of Care from other Providers/Settings; and (2) Transfer of Information at Post-Acute Care Discharge, and End of Care to other Providers/Settings. 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 IRF QRP, with data collection beginning on or about October 1, 2019.

We received several comments on this implementation update, which are summarized below.

Comment: A few commenters supported continued work on the two transfer of information measures. Some commenters suggested that CMS be cautious in its development of the Transfer of Information measure set and only propose and adopt measures that receive NQF endorsement. These commenters cited concerns about the measure development, citing the 2016 MAP PAC/LTC meeting. One commenter noted that care is often fragmented, disorganized, and guided by factors that are not related to the quality of care or patient outcomes and that decision-makers often lack adequate information to make the best decisions during care transition planning. The commenter, noting the importance of including the patient and family members in decision-making about the most appropriate location for the patient's post-acute care,

recommended that CMS adopt a more direct approach for engaging the patient. The commenter believes that patient and family member insight and feedback on quality of care will ensure that the transfer of patient health information and care preferences are accurately communicated. One commenter emphasized that the measures should include both the receipt of information and the transmittal of information needed to coordinate care. Another commenter encourages more conversation about the measure and recommended types of information to be included to meet the measure criteria. The commenter supports balancing the burden of reporting with the utility of the measure and believes that limiting the information collected may not lead to improvements in the quality of care transitions.

Response: We appreciate the comments and feedback on the Transfer of Health Information measures that are currently under development. As we continue to develop these measures, we will take the commenters' concerns into account. We agree with the comment that patient engagement in decisions about their care at transitions is a priority in ensuring patient-centered care. We will also consider the feedback pertaining to the importance of having the two measures, the types of information to be included in the measure numerators, balancing burden with the measure utility, patient and family engagement and involvement in decision-making about care, and the transfer of patient goals and care preferences. We intend to re-submit these measures, once fully specified and tested, for review to the MAP PAC/LTC Workgroup. Further, we plan to submit the measures to the NQF for consideration for endorsement when the measures are ready to be reviewed.

TABLE 8—IRF QRP QUALITY MEASURES UNDER CONSIDERATION FOR FUTURE YEARS

NQS priority	Patient- and caregiver-centered care
Measures	Experience of Care. Application of Percent of Residents Who Self-Report Moderate to Severe Pain (Short Stay) (NQF #0676).
NQS priority	Communication and care coordination
Measure	Modification of the Discharge to Community-Post Acute Care Inpatient Rehabilitation Facility Quality Reporting Program measure.

J. Standardized Patient Assessment Data Reporting for the IRF QRP

1. Standardized Patient Assessment Data Reporting for the FY 2019 IRF QRP

Section 1886(j)(7)(F)(ii) of the Act requires that for fiscal year 2019 and each subsequent year, IRFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. As we describe in more detail in section XII.G.1 of this final rule, we are finalizing that the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), will be removed and replaced with the proposed pressure ulcer measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 IRF QRP. The current pressure ulcer measure will remain in the IRF QRP until that time. Accordingly, for the requirement that IRFs report standardized patient assessment data for the FY 2019 IRF QRP, we proposed in the FY 2018 IRF PPS proposed rule (82 FR 20721 through 20722) that the data elements used to calculate the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) 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 1886(j)(7)(F)(i) of the Act 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 IRF 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.[26] [27] [28] [29] [30] [31] Pressure related wounds are considered healthcare acquired conditions.

As we previously noted, the data elements needed to calculate the current pressure ulcer measure are already included on the IRF–PAI and reported for IRFs, 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.[32] 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 is not available), ranged from 0.91 to 0.99 for these data elements. These kappa scores indicate ''almost perfect'' agreement using the

[26] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' Nurs N Z 19(10): 20–24.

[27] Gorzoni, M.L. and S.L. Pires (2011). ''Deaths in nursing homes.'' Rev Assoc Med Bras 57(3): 327–331.

[28] 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.

[29] White-Chu, E.F., et al. (2011). ''Pressure ulcers in long-term care.'' Clin Geriatr Med 27(2): 241–258.

[30] 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.

[31] Bennet, G, Dealy, C Posnett, J (2004). The cost of pressure ulcers in the UK, Age and Aging, 33(3):230–235.

[32] 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.*

Landis and Koch standard for strength of agreement.[33]

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/Downloads/July-2016-Pressure-Ulcer-TEP-Report_revised.pdf.* We solicited stakeholder feedback on our proposal and received several comments, which are summarized below.

Comment: Several comments supported reporting the data elements already implemented in the IRF QRP to fulfill the requirement to report standardized patient assessment data for the FY 2019 IRF QRP. Specifically, many commenters supported the use of data elements used in calculation of the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) to fulfill this requirement.

Response: We appreciate the commenters' support of the proposal.

Final decision: After consideration of the public comments received, we are finalizing that the data elements currently reported by IRFs to calculate the current measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), meet the definition of standardized patient assessment data with respect to 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 1886(j)(7)(F)(i) of the Act will also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

2. Standardized Patient Assessment Data Reporting Beginning With the FY 2020 IRF QRP

In the FY 2018 IRF PPS proposed rule (82 FR 20722 through 20739), we described our proposals for the reporting of standardized patient assessment data by IRFs beginning with the FY 2020 IRF QRP. For FY 2020, this would apply to all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. IRFs would be required to report these data on admission and discharge, with the exception of three data elements (Brief Interview of Mental Status (BIMS), Hearing, and Vision) that would be collected on admission only. Following the initial reporting year for the FY 2020 IRF QRP, subsequent years for the IRF QRP would be based on a full calendar year of such data reporting.

In selecting the data elements proposed in the FY 2018 IRF PPS proposed rule, 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 noted that the patient 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 IRF–PAI to accommodate standardized patient assessment data reporting would lead to an overall increased reporting burden. However, we noted that there is no additional data collection burden for standardized data already collected and submitted on the quality measures.

We received several comments related to the reporting of the standardized patient assessment data, which are summarized below.

Comment: Many commenters expressed significant concerns with respect to our standardized patient assessment data proposals. Several commenters stated that the new standardized patient assessment data reporting requirements will impose significant burden on providers, given the volume of new standardized patient assessment data elements that were proposed to be added to the IRF–PAI. Several commenters noted that the addition of the proposed standardized patient assessment data elements would require hiring more staff, retraining staff on revised questions or coding guidance, and reconfiguring internal databases and EHRs. Other commenters expressed concerns about the gradual but significant past and future expansion of the IRF–PAI through the addition of standardized patient assessment data elements and quality measures, noting the challenge of coping with ongoing additions and changes, especially for small or rural providers. Several commenters stated that clinicians already record comorbidities as ICD–10 diagnosis codes, and recommended that CMS investigate how to utilize patient information that is already reported (for example, claims) rather than adding new assessment items to the IRF–PAI.

Several commenters expressed concern related to the implementation timeline in the proposed rule, which would require IRFs to begin collecting the proposed standardized patient assessment data elements in the timeframe stated in the proposed rule. Several commenters noted that CMS had not yet provided sufficient specifications or educational materials to support implementation of the new patient assessments in the proposed timeline.

Several commenters recommended CMS to delay the reporting of new standardized patient assessment data elements by at least one year, and to carefully assess whether all of the proposed standardized patient assessment data elements are necessary under the IMPACT Act. Commenters suggested ways to delay the proposals for standardized patient assessment data elements in the categories of Cognitive Function and Mental Status; Special Services, Treatments, and Interventions; and Impairments, including allowing

[33] Landis, R., & Koch, G. (1977, March). The measurement of observer agreement for categorical data. Biometrics 33(1), 159–174.

voluntary or limited reporting for a period of time before making comprehensive reporting mandatory, and delaying the beginning of mandatory data collection for a period of time. Some commenters recommended that during the delay, CMS re-evaluate whether it can require the reporting of standardized patient assessment data in a less burdensome manner.

Response: We understand the concerns raised by commenters that the finalization of our standardized patient assessment data proposals would require IRFs to spend a significant amount of resources preparing to report the data, including updating relevant protocols and systems and training appropriate staff. We also recognize that we can meet our obligation to require the reporting of standardized patient assessment data for the categories described in section 1899B(b)(1)(B) of the Act while simultaneously being responsive to these concerns. Therefore, after consideration of the public comments we received on these issues, we have decided that at this time, we will not finalize the standardized patient assessment data elements we proposed for three of the five categories under section 1899B(b)(1)(B) of the Act: Cognitive Function and Mental Status; Special Services, Treatments, and Interventions; and Impairments. Although we believe that the proposed standardized patient assessment data elements would promote transparency around quality of care and price as we continue to explore reforms to the PAC payment system, the data elements that we proposed for each of these categories would have imposed a new reporting burden on IRFs. We agree that it would be useful to evaluate further how to best identify the standardized patient assessment data that would satisfy each of these categories; would be most appropriate for our intended purposes including payment and measure standardization; and can be reported by IRFs in the least burdensome manner. As part of this effort, we intend to conduct a national field test that allows for stakeholder feedback and to consider how to maximize the time IRFs have to prepare for the reporting of standardized patient assessment data in these categories. We intend to make new proposals for the categories described in sections 1899B(b)(1)(B)(ii), (iii) and (v) of the Act no later than in the FY 2020 IRF PPS proposed rule.

In this final rule, we are finalizing the standardized patient assessment data elements that we proposed to adopt for the IMPACT Act categories of Functional Status and Medical Conditions and Co-Morbidities. Unlike the standardized patient assessment data that we are not finalizing, the standardized patient assessment data that we proposed for these categories are already required to calculate the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678) quality measure, the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury quality measure (which we are finalizing in this final rule), and the 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) measure (which we finalized in the FY 2016 IRF PPS final rule). As a result, we do not believe that finalizing these proposals creates a new reporting burden for IRFs or otherwise necessitates a delay.

Comment: Several commenters expressed support for the adoption of standardized patient assessment data elements. Several commenters expressed support for standardizing the definitions as well as the implementation of the data collection effort. Several commenters also supported CMS' goal of standardizing the questions and responses across all PAC settings to help ''enable the data to be interoperable, allowing it to be shared electronically, or otherwise between PAC provider types.'' Several commenters stated that streamlining requirements across Medicare's quality reporting programs will reduce the administrative burden of quality reporting for these facilities as well as the physicians and other clinicians who contribute to that reporting. Another commenter noted full support of the IMPACT Act's goals and objectives and appreciated CMS' efforts to regularly communicate with stakeholders through various national provider calls, convening of stakeholders, and meetings with individual organizations. Another commenter recognized the value of and need for a unified patient assessment system for PAC as part of a potential unified payment system for PAC.

Response: We appreciate the support of these proposals, but note that for the reasons previously explained, we have decided at this time to not finalize the proposals for three of the five categories under section 1899B(b)(1)(B) of the Act: Cognitive Function and Mental Status; Special Services, Treatments, and Interventions; and Impairments.

Comment: Several commenters stated that there is insufficient evidence demonstrating the reliability and validity of the proposed standardized patient assessment data elements. Some commenters stated that the expanded standardized patient assessment data reporting requirements have not yet been adequately tested to ensure they collect accurate and useful data in this setting. A few commenters stated that only five of the proposed 23 standardized patient assessment data elements are currently reported in the IRF–PAI and the other 18 are currently used in other post-acute setting patient assessment instruments, mainly the Minimum Data Set (MDS) 3.0 used in skilled nursing facilities (SNFs). Other commenters stated that CMS' conclusion that the collection of these standardized patient assessment data elements in the IRF setting would be feasible and the standardized patient assessment data elements would result in valid and reliable data was based on the current use of these data elements in the MDS and the testing of these data elements in the PAC PRD. A few commenters stated that several of the proposed standardized patient assessment data elements that had not been adequately tested were deemed close enough to an item that had been tested in the PAC PRD or in other PAC settings and thus appropriate for implementation.

Response: Our standardized patient assessment data elements were selected based on a rigorous multi-stage process described in the FY 2018 IRF PPS Proposed Rule (82 FR 20716 through 20717). In addition, we believe that the PAC PRD testing of many of these data elements provides good evidence from a large, national sample of patients and residents in PAC settings to support the use of these standardized patient assessment data elements in and across PAC settings. However, as previously explained, we have decided at this time to not finalize the proposals for three of the five categories under section 1899B(b)(1)(B) of the Act: Cognitive Function and Mental Status; Special Services, Treatments, and Interventions; and Impairments. Prior to making new proposals for these categories, we intend to conduct extensive testing to ensure that the standardized patient assessment data elements we select are reliable, valid and appropriate for their intended use.

Comment: MedPAC suggested that CMS should be mindful that some data elements, when used for risk-adjustment, may be susceptible to provider manipulation. MedPAC is concerned about the proposed elements such as oxygen therapy, intravenous medications, and nutritional approaches that may induce service use. MedPAC supports the inclusion of these care items when they are tied to a medical

necessity, such as in previous MedPAC work, where patients were counted as using oxygen services only if they have diagnoses that typically require the use of oxygen. MedPAC encouraged CMS to take a similar approach in measuring use of services that are especially discretionary. For some data elements, the commenters suggested that CMS may want to consider requiring a physician signature to attest that the reported service was reasonable and necessary and including a statement adjacent to the signature line warning that filling a false claim is subject to treble damages under the False Claims Act.

Response: We acknowledge the feedback from MedPAC, and agree with the importance of data integrity within patient assessment instruments. We will explore the suggestions made by MedPAC.

A full discussion of the standardized patient assessment data elements that we proposed to adopt for the categories described in sections 1899B(b)(1)(B)(ii), (iii) and (v) of the Act can be found in the FY 2018 IRF PPS proposed rule (82 FR 20723 through 20739). In light of our decision to not finalize our proposals with respect to these categories, we are not going to address in this final rule the specific technical comments that we received on these proposed standardized patient assessment data elements. However, we appreciate the many technical comments we did receive specific to each of these data elements, and we will take them into consideration as we develop new proposals for these categories. Below we discuss the comments we received specific to the standardized patient assessment data we proposed to adopt, and are finalizing in this final rule, for the categories of Functional Status and Medical Conditions and Co-Morbidities.

a. Standardized Patient Assessment Data by Category

(1) Functional Status Data

We proposed that the data elements currently reported by IRFs to calculate the proposed 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(j)(7)(F)(i) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(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 Item Set: Volume 1 of 3.'' [34] 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'' [35] 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.'' [36] 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 IRF PPS final rule (80 FR 47100 through 47111). We invited public comment on this proposal.

We received several comments on this proposal, which are summarized below.

Comment: Several commenters, including MedPAC, supported the collection of standardized patient assessment data across PAC settings. Some commenters specifically addressed support for CMS's proposal that data elements submitted to CMS 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 satisfy the requirement to report standardized patient assessment data under section 1899B(b)(1)(B)(i) of the Act addressing functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider.

Response: We appreciate the commenters' support.

Comment: One commenter did not support the proposed standardized patient assessment data elements for functional status, stating that the items were burdensome for providers, do not relate to all patients, are often too granular, and are duplicative of existing items related to functional status. Some commenters noted that the proposed standardized functional assessment data are used to calculate the cross-setting process 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), and recommended that CMS consider proposing data elements from outcomes-based functional status quality measures in PAC settings in the future. Another commenter noted that the proposed standardized data are not intended to capture all significant impacts of IRF interventions and encouraged CMS to consider instrumental activities of daily living as a measurement construct in the future, because instrumental activities of daily living performance is critical to maintain safety and avoid readmissions.

Response: We appreciate the commenters' concerns about the duplication of the functional data elements, relevance to the IRF population, and value of cross-setting application in post-acute settings. With regard to burden, we would like to clarify that the proposal to use data elements from the quality 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) means that no new data elements will be added to the IRF–PAI to satisfy the requirement to report standardized patient assessment data under section 1899B(b)(1)(B)(i) of the Act addressing functional status. Therefore, this proposal does not add burden as the proposed data elements are currently reported on the IRF–PAI. We note that the three self-care items and nine mobility items are daily activities that are relevant for the majority of patients, and that gateway questions allow IRFs to skip walking items for patients who do not walk and to skip wheelchair items if the person does not mobilize using a wheelchair. For more information about this previously finalized quality measure, we refer readers to the FY 2016 IRF PPS final rule (80 FR47100 through 47111).

[34] 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).

[35] Ibid.

[36] Ibid.

We appreciate the suggestions for future enhancements, such as including data elements related to instrumental activities of daily living and outcome-based measures on the IRF–PAI, and will take this suggestion into consideration.

Comment: One commenter cautioned CMS that collection of functional status data across PAC settings may be affected by the education level and professional expertise of the individual completing the assessment. Two commenters recommended revisions to section GG of the IRF–PAI training manual with one requesting clarification guidance about coding 09, Not Applicable and two commenters requesting clarification about coding 10, Activity not attempted due to environmental limitations. Another commenter requested clarification on the use of the ''Activity was not attempted'' codes on the IRF–PAI when setting goals. The commenter believed that use of the codes 07, Patient refused, 09, Not applicable, 10, Not attempted due to environmental limitations and 88, Not attempted due to medical or safety concerns for setting goals is inconsistent with IRF practices and clinical guidelines. Additionally, one commenter noted that the proposed changes to the existing standardized patient assessment data elements will be costly for providers as they retrain staff and modify items in documentation systems, both electronic and paper. The commenters suggested that these changes be submitted for review by the NQF.

One commenter requested clarification about the coding of self-care and mobility goals questioning if all goals are expected to be completed as part of the use of the data elements from 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).

Response: We appreciate the commenters' concerns related to the collection of standardized patient assessment data. We agree with the importance of comprehensive training for all PAC settings. We provide training materials through the CMS webinars, open door forums, and help desk support. We update training manuals based on feedback from providers, including help desk questions and public comments. We welcome ongoing input from stakeholders on key implementation and training considerations, which can be submitted via email at *PACQualityInitiative@cms.hhs.gov.*

The standardized patient assessment data element proposal proposed the use of data elements that are also used to calculate the adopted function process quality 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). This quality measure collects on the admission and discharge performance self-care and mobility items and requires only one goal to be reported for each IRF patient stay. Therefore, at least one goal is expected to be completed as part of the data elements for this adopted quality measure. For more information about this quality measure we refer the reader to our Quality Measure User's Manual, available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.* We would like to clarify that our proposal to adopt the standardized patient assessment data elements for functional status includes the admission and discharge performance data elements; it does not include the discharge goal data elements. We note that at least one self-care or mobility goal is required for the quality measure, as described above.

With regard to NQF review, we follow the NQF process of annual maintenance and endorsement maintenance for NQF-endorsed measures, including updating measure specifications each year to address any changes to the measure.

Final Decision: After consideration of the public comments we received, we are finalizing that the data elements currently reported by IRFs 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), 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(j)(7)(F)(i) of the Act will also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

(2) Medical Condition and Comorbidity Data

We proposed 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 1886(j)(7)(F)(i) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

''Medical conditions and comorbidities'' and the conditions addressed in the standardized patient assessment 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 healthcare 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 XII.G.1 and XII.J.1 of this final rule, 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 XII.G.1 of this final rule. We received several comments on our proposal, which are summarized below.

Comment: We received support for the reporting of data elements already implemented in the IRF QRP to satisfy the requirement to report standardized patient assessment data. One commenter recommended the collection of additional data elements under the category of Medical conditions and co-morbidities.

Response: We appreciate the comments in support of the proposal, and agree that these data elements currently reported by IRFs meet the definition of standardized patient assessment data and satisfy the requirement to report standardized patient assessment data. In our ongoing work to identify clinically useful data elements appropriate for standardization, we are evaluating and testing additional data elements in the category of Medical Conditions and Co-morbidities that may address some of the commenter's concerns.

Final decision: After consideration of the public comments we received, we are finalizing that the data elements currently reported by IRFs 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 1886(j)(7)(F)(i) of the Act will also satisfy the requirement to report standardized patient assessment data under section 1886(j)(7)(F)(ii) of the Act.

For comments related to the pressure ulcer quality measure, we refer readers to section XII.G.1. of this final rule.

K. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Start Date for Standardized Patient Assessment Data Reporting by New IRFs

In the IRF PPS FY 2016 final rule (80 FR 47123 through 47124), we adopted timing for new IRFs to begin reporting quality data under the IRF QRP beginning with the FY 2017 IRF QRP. We proposed that the new IRFs will be required to begin reporting standardized patient assessment data on the same schedule.

We did not receive any comments about the timing for new IRFs to begin reporting standardized patient assessment data.

Final decision: We are finalizing our proposal that new IRFs will begin reporting standardized patient assessment data on the same schedule as the one established for quality data under the IRF QRP.

2. Mechanism for Reporting Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

Under our current policy, IRFs report data by completing applicable sections of the IRF–PAI, and submitting the IRF–PAI to CMS through the QIES, ASAP system. For more information on IRF QRP reporting through the QIES ASAP system, refer to the ''Related Links'' section at the bottom of *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.* We proposed that the standardized patient assessment data elements would utilize the same mechanism, since they are either already included on, or would be added to, the IRF–PAI. Details regarding the IRF–PAI to the proposed standardized assessment data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF-QRP-Manual.html.*

We did not receive any public comments on this proposal.

Final decision: We are finalizing our proposal that IRFs must report standardized patient assessment data by completing applicable sections of the IRF–PAI, and submitting the IRF–PAI to CMS through the QIES ASAP system.

3. Schedule for Reporting Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

Starting with the FY 2019 IRF QRP, we proposed to apply our current schedule for the reporting of measure data to the reporting of standardized patient assessment data. Under that policy, except for the first program year for which a measure is adopted, IRFs must report data on measures for IRF Medicare patients who are discharged 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, IRFs are only required to report data on IRF Medicare patients who are discharged on or after October 1 of the last quarter of the calendar year that applies to that program year. For example, for the FY 2018 IRF QRP, data on measures adopted for earlier program years must be reported for all IRF Medicare patients who are discharged during CY 2016. However, data on new measures adopted for the first time for the FY 2018 IRF QRP must only be reported for IRF Medicare patients who are discharged during the last calendar year quarter of 2016.

Tables 9 and 10 illustrate this policy using the FY 2019 and FY 2020 IRF QRP as examples.

TABLE 9—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 *^ for the FY 2019 IRF QRP * *
Q4: CY 2017 10/1/2017–12/31/2017	CY 2017 Q4 Deadline: May 15, 2018.

* We note that the submission of IRF–PAI data must also adhere to the IRF PPS deadlines.

* * The term ''FY 2019 IRF QRP'' means the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met in order for an IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.

^ Applies to data reporting using the IRF PAI and data reporting using the National Health Safety Network.

TABLE 10—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 *^ for the FY 2020 IRF 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 the submission of IRF–PAI data must also adhere to the IRF PPS deadlines.
* * The term ''FY 2020 IRF QRP'' means the fiscal year for which the IRF QRP requirements applicable to that fiscal year must be met in order for an IRF to receive the full annual update when calculating the payment rates applicable to it for that fiscal year.
^ Applies to data reporting using the IRF PAI and data reporting using the National Health Safety Network.

We proposed to extend our current policy governing the schedule for reporting quality measure data to the reporting of standardized patient assessment data beginning with the FY 2019 IRF QRP. We sought public comment on our proposal.

We did not receive any public comments on this proposal.

Final decision: We are finalizing our proposal to extend our current policy governing the schedule for reporting quality measure data to the reporting of standardized patient assessment data beginning with the FY 2019 IRF QRP.

4. Schedule for Reporting the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury Measure Beginning With the FY 2020 IRF QRP

As discussed in section XIII.G. of this final rule, we are adopting the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure beginning with the FY 2020 IRF QRP. In the FY 2018 IRF PPS proposed rule (82 FR 20740), we proposed that IRFs would report data on that measure using the IRF–PAI that is submitted through the QIES ASAP system. IRFs would be required to report these data on admission and discharge for all Medicare Part A and MA patients discharged between October 1, 2018 and December 31, 2018. More information on IRF reporting using the QIES ASAP system is located at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Technical-Information.html.*

Under our current policy, IRFs would only be required to submit data on the proposed measure for the fourth quarter of CY 2018 for purposes of the FY 2020 IRF QRP. Starting in CY 2019, IRFs would be required to submit data for the entire calendar year beginning with the FY 2021 IRF QRP.

We did not receive any public comments on this proposal.

Final decision: We are finalizing our proposal to require IRFs to report data on the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure using the IRF–PAI that is submitted through the QIES ASAP system beginning with the FY 2020 IRF QRP.

5. Input Sought for 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 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. For IRFs, the Medicare population comprises approximately 60 percent of the IRF population served. We agree that collecting quality data on all patients in the IRF setting supports CMS' mission to ensure quality care for all individuals, including Medicare beneficiaries. We also appreciate that collecting quality data on all patients regardless of payer source may create additional burden. However, we also note that the effort to separate out Medicare beneficiaries from other patients has clinical and work flow implications with an associated burden, and we further appreciate that it is common practice for IRFs to collect IRF-PAI data on all patients, regardless of payer source. Accurate representation of quality provided in IRFs is best conveyed using data on all IRF patients, regardless of payer. Thus, we sought, and continue to seek, input on whether we should require quality data reporting on all IRF patients, regardless of payer, where feasible—noting that Part A claims data are limited to only Medicare beneficiaries.

We received several comments about the request for input on data reporting related to the IRF QRP, which are summarized below.

Comment: Several commenters supported expanding the IRF QRP to include all patients regardless of payer. MedPAC was supportive of the effort to ensure quality care for all patients, but sensitive to the issue of burden, and cautioned CMS that any future payment adjustments related to performance should be based only on Medicare beneficiary outcomes. However, many commenters noted that this would not be overly burdensome, as most of their organizations' members currently complete the IRF–PAI on all patients, regardless of payer status. One commenter recommended that CMS continue to align the patient assessment instruments across PAC settings to apply quality measures and patient assessment data to a uniform Medicare population at a minimum, and account for payer status in public reporting. One commenter questioned how CMS would use data collected from other payers, and whether the use of the data would outweigh any additional reporting burden. One commenter supported collecting the IRF–PAI on all patients, with the concern that collecting on only a subset of patients could be interpreted as providing different levels of care based on payer.

Response: We appreciate the feedback received on this topic and agree that it is import to ensure quality of care for all patients while accounting for burden. We will take into consideration the commenters' concerns, questions, and recommendations as we further assess expanding the IRF QRP to include all patients regardless of payer.

L. Application of the IRF QRP Submission Requirements and Payment Impact to the Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

We proposed to revise § 412.634(b) to require IRFs to report both data on measures and standardized patient assessment data under the IRF QRP, in a form and manner, and at a time specified by CMS.

We did not receive any comments on this proposal.

Final decision: We are finalizing our proposal and revising § 412.634(b) to

require IRFs to report both data on measures and standardized patient assessment data under the IRF QRP, in a form and manner, and at a time specified by CMS.

M. Application of the IRF QRP Exception and Extension Requirements to the Submission of Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

In the FY 2017 IRF PPS final rule (81 FR 52124), we codified the requirements pertaining to data submission exception and extension for the IRF QRP at § 412.634(c). We proposed to revise § 412.634(c) to extend these policies to the submission of standardized patient assessment data beginning with the FY 2019 IRF QRP.

We received one comment about this proposal, which is summarized below.

Comment: A commenter supported applying the existing exception and extension policies for IRF QRP to the reporting of standardized patient assessment data.

Response: We appreciate the commenter's support.

Final decision: We are finalizing our proposal and revising § 412.634(c) to apply the existing exception and extension policies for the IRF QRP to the submission of standardized patient assessment data beginning with the FY 2019 IRF QRP.

N. Application of the IRF QRP Data Completion Thresholds to the Submission of Standardized Patient Assessment Data Beginning With the FY 2019 IRF QRP

In the FY 2015 IRF PPS final rule (79 FR 45921 through 45923), we finalized IRF QRP thresholds for completeness of IRF data submissions. To ensure that IRFs are meeting an acceptable standard for completeness of submitted data, we finalized the policy that, beginning with the FY 2016 IRF QRP, IRFs must meet or exceed two separate data completeness thresholds: One threshold set at 95 percent for completion of measures data collected using the IRF–PAI submitted through the QIES and a second threshold set at 100 percent for measures data collected and submitted using the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN). The term ''measures'' refers to quality measures, resource use, and other measures.

For a detailed discussion of the finalized IRF QRP data completion requirements, please refer to the FY 2015 IRF PPS final rule (79 FR 45921 through 45923). In the FY 2017 IRF PPS final rule, (81 FR 52124), we codified the IRF QRP Data Completion Thresholds at § 412.634. We noted that § 412.634(f)(1) requires that IRFs meet or exceed the reporting threshold set at 95 percent for completion of measure data collected using the IRF–PAI. However, some assessment data will not invoke a response and in those circumstances are not ''missing'' nor is the data 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. In the FY 2018 IRF PPS proposed rule (82 FR 20740), we proposed to extend our current IRF QRP data completion requirements to the reporting of standardized patient assessment data.

We also proposed to revise § 412.634(f)(1) and (2) to include the submission of standardized patient assessment data that is collected using the IRF–PAI.

As we noted in the FY 2015 IRF PPS final rule (79 FR 45921 through 45923), the threshold of 95 percent is based on the need for complete records, which allows appropriate analysis of measure data for the purposes of updating measure specifications as they undergo measure maintenance reviews with the NQF. Additionally, complete data is needed to understand the validity and reliability of data items, including risk-adjustment models. Our data suggests that the majority of current IRF providers are in compliance with or exceed this threshold related to the measure data, and we believe it is feasible for the standardized patient assessment data as well.

We invited public comment on our proposal to revise § 412.634(f)(1) and (2) to add standardized patient assessment data for the 95 percent completeness threshold for data collected via IRF–PAI. We received several comments, which are summarized below.

Comment: Several commenters opposed the proposal to apply the 95 percent data completion requirement for IRF quality measures to the standardized patient assessment data, suggesting that the IRF QRP requirements are higher than other PAC settings. Many commenters noted that CMS has proposed an 80 percent completion threshold for standardized patient assessment data in the LTCH and SNF QRPs, and recommended that CMS avoid perpetuating discrepant standards across PAC settings. Commenters recommended that CMS adopt an 80 percent threshold for standardized patient assessment data, in line with other PAC QRPs. A commenter believed that IRF thresholds were historically higher than the SNF thresholds because of the relative length of the assessment instruments in the settings, but noted that the IRF–PAI has increased by several pages in the past three rulemaking cycles, making it similar in length to the SNF MDS instrument. Commenters recommended that CMS work with stakeholders to develop a more appropriate threshold, consistent with the requirements for other PAC QRPs.

One commenter suggested that the IRF QRP completion threshold should be lower in the first reporting year for which new items are required. One commenter suggested a grace period for the first three months of data collection on new measures to account for when IRFs are still training staff and adapting to new requirements. Alternatively, another commenter suggested that penalties for data completion threshold should be based on at least 12 months of data. One commenter stated that the availability of a ''dash'' response option on the IRF–PAI without sufficient guidance increases the risk that an IRF will fall short of the threshold. These commenters suggested that the dash counts against the completion threshold, raising concern that the rapid increase in items for which dashes are an available response option is unnecessarily increasing the risk that an IRF will fall short of the 95 percent threshold.

Response: While we maintain that providers should be submitting complete and accurate data, and that our data compliance checks suggest that the majority of current IRF providers are in compliance with, or exceed, the 95 percent data completion threshold for the assessment-based quality measure data, we also appreciate the concerns the commenters have expressed regarding the inconsistent reporting threshold for IRFs in comparison with other post-acute care quality reporting programs, the concerns expressed about the increased assessment data reporting required on the additional measures (and the proposed standardized patient assessment data elements) that have been implemented into the IRF QRP as the program has evolved, and the increased potential of falling short of achieving the threshold because the reporting requirements have increased. We also appreciate the concerns pertaining to an increase in assessment data elements are compounded because many response options include the use of a dash. However this assessment response option was intentional so as to enable the assessor to indicate if they

did not assess or know the status of the information at the time of the assessment rather than forcing a response.

We appreciate the suggestion regarding CMS working with stakeholders to consider additional approaches related to threshold determinations, and further appreciate the suggestions related to a grace period in the first quarter of data reporting on new data submission, and only assessing on a year of data submission, or lowering the threshold in the first year of reporting. Although IRFs have largely been successful in their data reporting and achieving the threshold, we also appreciate the confusion that may exist with two thresholds. We also appreciate the importance of consistency across programs and agree that the IRF QRP has evolved to include additional measures and data reporting. Taken together, we believe that while we would agree that working with stakeholders on new approaches to fair and consistent thresholds would be informative and useful, we also believe that our current policy, as commented on, requires revision due to the growth of the program. We are also mindful of the burden placed on providers in tracking threshold compliance. Therefore, while we anticipate continued levels of reporting success, we appreciate the concerns raised that the completion of at least 95 percent of all required assessments and will take these concerns under considerations for future rulemaking.

Regarding the suggestion that we not consider the initial quarter of data reporting by IRFs on new data that is required, we have analyzed the first quarter of data reporting on new measures submitted by IRFs and found that most IRFs were successful in their data submission and therefore do not believe that the first quarter of reporting should be waived at this time. While we appreciate that the suggestion regarding lowering the threshold for the first year of data reporting will address the concerns provided by commenters, we believe that addressing the concerns by reducing the overall threshold to a level that is consistent with the other programs, and maintained until we are able to further evaluate the data, would resolve the immediate concerns regarding our current policy pertaining to the fairness given the amount of data elements that must be coded 100 percent of the time on at least 95 percent of all assessments, which will likely expand as the program expands, as described. We believe that we should take such input into consideration. We are also sensitive to the level of tracking that would be necessary by IRFs and the potential this could have for increasing administrative burden and that such activities might detract from direct care services.

Final Decision: We are finalizing our policy to revise § 412.634(f)(1) and (2) to apply the IRF QRP data completion thresholds to the submission of standardized patient assessment data beginning with the FY 2019 IRF QRP.

O. Policies Regarding Public Display of Measure Data for the IRF QRP

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF QRP data available to the public after ensuring that an IRF has the opportunity to review its data prior to public display. Measure data is currently displayed on the Inpatient Rehabilitation Facility Compare Web site, which is an interactive web tool that assists individuals by providing information on IRF quality of care, including those who need to select an IRF. For more information on IRF Compare, we refer readers to *https://www.medicare.gov/inpatientrehabilitationfacilitycompare/.* Additionally, for a more detailed discussion about the provider's confidential review process prior to public display of quality measures, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52128 through 52131).

We also finalized the process we use to publish a list of IRFs that successfully meet the reporting requirements for the applicable IRF QRP year on the IRF QRP Web site in the FY 2017 IRF PPS final rule (81 FR 52125). The list of compliant IRFs is available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Data-Submission-Deadlines.html.*

In the FY 2017 IRF PPS final rule (81 FR 52055 through 52141), we finalized the public display of measure data on the IRF Compare Web site in CY 2017 for the following four quality measures pending the availability of data: (1) NHSN Facility-wide Inpatient Hospital-onset MRSA Bacteremia Outcome Measure (NQF #1716); (2) NHSN Facility-wide Inpatient Hospital-onset CDI Outcome Measure (NQF #1717); (3) Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431); and (4) Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680).

In the FY 2017 IRF PPS final rule (81 FR 52126), we stated that ''pending the availability of data'', the public display of NHSN Facility-wide Inpatient Hospital-onset MRSA Bacteremia Outcome Measure (NQF #1716) and NHSN Facility-wide Inpatient Hospital-onset CDI Outcome Measure (NQF #1717) would initially be based on data collected from January 1, 2015, through December 31, 2015 and will be displayed based on four rolling quarters. We would like to clarify that the initial public display of data for these two quality measures (MRSA and CDI) will be based on data collected from January 1, 2016 through December 31, 2016 (CY 2016), as the CY 2015 data is not available for display using the Standardized Infection Ratio (SIR) metric, but rather this data (CY 2015) was used by the CDC to calculate the ''predicted'' number of infections (the number of infections that would be expected to occur based on previously reported data) for each IRF, so that subsequent data could be used to calculate the SIR for each of these quality measures.

The SIR is a summary statistic that compares the ''predicted'' number of infections to the ''observed'' or actual number of infections for a given IRF. This process or ''rebaselining'' of data occurs periodically when the CDC determines that referent period of data or ''baseline'' is no longer meaningful due to changes in the quality measure protocols or changes in provider populations. When the CDC uses a specific year's data to inform newly calculated ''predicted'' number of infections, we are unable to use that specific year of data to calculate the SIR, and for this reason, we are unable to display the MRSA and CDI performance data using the CY 2015 IRF NHSN data, and will use the CY 2016 data to inform the SIR calculations when we publicly display the SIRs for these measures in fall 2017. The Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) and Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680) will be based on the influenza vaccination season from October 1, 2015, through March 31, 2016 and will be updated annually. We refer readers to the FY 2017 IRF PPS final rule (81 FR 52126 through 52128) for details on the calculations and display of these quality measures. In the FY 2018 IRF PPS proposed rule, pending the availability of data, we proposed to publicly report data in CY 2018 for the following two 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); and (2) Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674). Data collection for these two assessment-based measures began on October 1, 2016. We proposed to display data for the assessment-based measures based on four rolling quarters of data and would initially use discharges from January 1, 2017, through December 31, 2017. In addition, we proposed to publicly report four claims-based measures: (1) Medicare Spending Per Beneficiary—PAC IRF QRP; (2) Discharge to Community—PAC IRF QRP; (3) Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP; and (4) Potentially Preventable Within Stay Readmission Measure for IRFs.

These measures were adopted for the IRF QRP in the FY 2017 IRF PPS final rule (81 FR 52130 through 52131) to be based on data from 2 consecutive calendar years. As previously adopted, confidential feedback reports for these four claims-based measures will be based on calendar years 2015 and 2016 and data collected for discharges beginning January 1, 2015, through December 31, 2016. However, our current proposal revises the dates for public reporting and we proposed to transition from calendar year to fiscal year to make these measure data publicly available by October 2018. Thus, we proposed for public reporting beginning in CY 2018 for four claims-based measures based on fiscal years 2016 and 2017 and data collected from discharges beginning October 1, 2015, through September 30, 2017.

We proposed to remove the following claims-based measure: ''All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from Inpatient Rehabilitation Facilities'' from the IRF QRP and public reporting by October 2018. We refer readers to section XIII.H. of this final rule for additional information regarding the removal of this measure from quality reporting and public display. We also proposed to remove the following assessment-based measure ''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'' from the IRF QRP and public reporting by October 2020. We refer readers to section XIII.G. of this final rule for additional information regarding the proposed replacement of this measure from quality reporting and public display.

For the assessment-based measures, Application of Percent of LTCH Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631); 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 also proposed to assign IRFs with fewer than 20 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 20 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period.

For the claims-based measures, Discharge to Community—PAC IRF QRP; Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP; and Potentially Preventable Within Stay Readmission Measure for IRFs, to ensure the statistical reliability of the measures, we also proposed to assign IRFs with fewer than 25 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 25 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period. For Medicare Spending Per Beneficiary—PAC IRF QRP, to ensure the statistical reliability of the measure, we proposed to assign IRFs with fewer than 20 eligible cases during a performance period to a separate category: ''The number of cases/patient stays is too small to report.'' If an IRF had fewer than 20 eligible cases, the IRF's performance would not be publicly reported for the measure for that performance period.

TABLE 11—PREVIOUSLY FINALIZED AND MEASURES FOR CY 2018 PUBLIC DISPLAY AND CONFIDENTIAL FEEDBACK REPORTS

Previously Finalized Measures:
Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #678).
National Healthcare Safety Network Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure (NQF #0138).
NHSN Facility-wide Inpatient Hospital-onset Methicillin-resistant Staphylococcus aureus Bacteremia Outcome Measure (NQF #1716).
NHSN Facility-wide Inpatient Hospital-onset Clostridium difficile Infection Outcome Measure (NQF #1717).
Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431).
Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680).
Proposed 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).
Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674).
Medicare Spending Per Beneficiary—PAC IRF QRP.
Discharge to Community—PAC IRF QRP.
Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.
Potentially Preventable Within Stay Readmission Measure for IRFs.

We invited public comment on the proposal for the public display of the two assessment-based measures and four claims-based measures, the removal of the All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs from the IRF QRP and from public display, and the replacement of ''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'' as described above.

We received several comments on our proposals related to public display, which are summarized below.

Comment: A few commenters supported public display of quality measures. One commenter expressed support for publicly displaying measures as long as they are sufficiently risk adjusted, and specifically supported the following measures: Medicare Spending Per Beneficiary—PAC IRF QRP, Discharge to Community—PAC

IRF QRP, Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP, and Potentially Preventable Within Stay Readmission Measure for IRFs. One commenter specifically supported public reporting for the Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) and Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (NQF #0680).

Response: We acknowledge the support for finalized, risk adjusted measures that will be posted for public display, and agree that displaying IRF QRP data on the IRF Compare Web site is important for patients and families.

Comment: Several commenters requested that CMS provide IRFs with patient-level feedback reports for the claims-based measures. The commenters expressed concern that IRFs cannot examine their performance and identify opportunities for modifications to their patient care practices and procedures to improve quality without patient-level data. A few of these commenters added that the claims-level data are updated infrequently, which also affects IRFs' ability to use the data to improve quality of care.

Response: We acknowledge the commenters' request and agree that the reporting of patient-level feedback reports would be useful for providers. We are taking this recommendation into consideration and are actively exploring approaches to providing patient-level data for the claims-based measures. Regarding the timeliness of claims data for quality improvement, we addressed this issue in the FY 2017 IRF PPS final rule (81 FR 52129 through 52131), and we refer the reader to that detailed discussion.

Comment: Several commenters expressed concern that measure changes on IRF Compare may be confusing to providers and difficult to use. One commenter stated that the proposed change to the pressure ulcer measure would fundamentally change the values reported on IRF Compare and that modifications to the way items are collected on the IRF–PAI will also influence measures that are being reported. The commenter requested that a clear methodology for adding, modifying, and removing measures be made available to providers so they are able to manage their data accordingly.

Response: We acknowledge the concerns regarding updates to measures and underlying items, and the resulting performance results displayed on IRF Compare. We would like to clarify that the proposed modifications to the pressure ulcer measure will not result in changes to how the quality measure performance results are publicly displayed. We plan to provide IRFs with detailed instructions and outreach training regarding measure changes and how to obtain and interpret confidential feedback reports that give providers their quality measure information before it is posted on IRF Compare. Additionally, we will work to provide documentation, education, and notification to the public prior to any measure change that will be displayed on IRF Compare.

Comment: A few commenters expressed concern that the measures employ different time frames for collecting data that result in provider performance based on different patient populations which could lead to misinterpretation of quality. As a result, a few commenters recommended delaying the public display of the IRF QRP data on IRF Compare until the measure reporting periods align.

Response: We acknowledge the concern expressed from the commenters that the measures use different time frames for collecting data that result in provider performance based on different patient populations, which could lead to misinterpretation of quality. We align the reporting periods and deadlines across PAC settings where alignment of the reporting period for consistency is appropriate.

Comment: One commenter recommended removal of the measure performance categories from IRF Compare, and requested that CMS provide the statistical methodologies used to calculate provider performance available to stakeholders. The commenter believed that this transparency would allow providers to analyze and replicate the IRF QRP data in order to validate measures on public display.

Response: We appreciate the commenter's concerns over the performance categories used to publicly display the IRF QRP readmission measures. The methods used to construct and assign performance categories are based on a robust statistical approach. Further, the approach used for displaying these measures is consistent with those used for public reporting of readmission measures in other quality reporting programs. For the currently publicly displayed NQF-endorsed All-Cause Readmission measure, information regarding the consideration of the statistical approach used and creation of the comparative performance categories is detailed in the NQF submission materials available at *http://www.qualityforum.org/ProjectTemplateDownload.aspx?SubmissionID=2502* (see section 2b of the IRF MSF Measure Testing document). Also, we plan to publish additional technical documentation regarding the methods used for categorizing provider performance for the claims-based measure that will be publicly displayed in 2018. We will continue to evaluate reporting methods for public display of the claims-based measures.

Comment: The commenter expressed concern regarding CMS's current approach to publicly report readmissions data and stated that the proposed rule does not provide clear details on how this data would be displayed for Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP and Potentially Preventable Within Stay Readmission Measure for IRFs. The commenter recommended that CMS work with stakeholders in the development of a meaningful approach to publicly report readmissions quality data. The commenter further recommended not using performance categories if the PPR measures are publicly reported.

Response: We acknowledge the commenter's concerns regarding the public display of the readmission measures. We continue to encourage stakeholders to provide input regarding approaches to publicly report readmissions quality data through the public mailbox or through future technical expert panels and other opportunities. With regard to the commenter's recommendation not to use performance categories when the readmission measures are publicly reported, please refer to the detailed response above regarding the approach for public display for all claims-based measures.

Comment: A commenter recommended not finalizing the proposal to publicly report the claims-based resource use measure, Medicare Spending Per Beneficiary-PAC IRF QRP. The commenter stated that this measure does not relate to quality of care in IRFs, is not an intuitive measure for consumers, and may be confused with other measures such as the Medical Loss Ratio (MLR) reported by private insurance plans. The commenter further stated that the measure should be available to researchers and others with an understanding of the measure's nuances, but is not ready to be made available for the public.

Response: We appreciate the commenter's concerns and will take their suggestions into consideration. Section 1899B(g)(1) of the Act requires

the Secretary to provide for public reporting of provider performance on resource use and other measures under section 1899B(d)(1) of the Act which includes total estimated Medicare spending per beneficiary. Confidential feedback reports will be available to IRFs prior to the public display of this measure and measure specifications are available to providers, researchers, and other stakeholders on the IRF QRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.* We will also perform provider outreach and training. In regard to the commenter's concerns about public interpretation, before we display a measure on IRF Compare we perform consumer testing to understand if the information is meaningful to the consumer and if they understand the measure as we intend on displaying it. We also continue to receive and review public comment on an ongoing basis submitted by users regarding IRF Compare and take these into consideration when revising the Web site.

Comment: One commenter supported the removal of the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge (NQF #2502) and replacing it with Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for public display.

Response: We appreciate the support for the removal of the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge (NQF #2502), and implementation of Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury on IRF Compare. We want to clarify that the Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP and the Potentially Preventable Within Stay Readmission Measure for IRFs will replace the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge (NQF #2502). Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury will replace the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) measure.

Comment: One commenter expressed concern about the proposed minimum patient thresholds and recommended CMS provide rationale for proposed limits and use a threshold of 30 cases for all measures.

Response: We appreciate the comment regarding the minimum patient threshold. Each measure has specifically applied minimum patient thresholds in public reporting so that there is enough volume of cases reported to protect individual privacy and provide meaningful results with a representative sample size. As we continue to monitor and evaluate measure performance, we will consider revising the minimum patient thresholds.

Comment: A few commenters expressed concern about the claims-based measures reporting periods. One commenter stated that the claims-based measure reported on IRF Compare is one to two years behind the other IRF–PAI and CDC NHSN measures. Another commenter stated the claims-based All-Cause measure is delayed three to four years (January 1, 2013 through December 31, 2014), and that this delay affects how actionable the data is for providers and how meaningful the data is to stakeholders and consumers.

Response: We acknowledge the commenters' concerns and suggestions to provide claims-based measure reports in a timelier manner. The All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs (NQF #2502) is based on two consecutive years of data to ensure a sufficient sample size to reliably assess IRF performance. As discussed in section XIII.H of this final rule, we are finalizing the removal of the All-Cause Readmission measure beginning with the FY 2019 IRF QRP and will replace it with the Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP and Potentially Preventable Within Stay Readmission Measure for IRFs, which will use more timely claims data and will initially include data from October 1, 2015 through September 30, 2017. The measures are as current as possible given the time for the claims submission process and the run-off period.

Comment: Some commenters expressed concern about the usefulness of the CAUTI, MRSA, and CDI quality measures due to the measures reported low incidence rate for CAUTI and expected low incidence rates for MRSA and CDI. A few commenters recommended publicly reporting data that is relevant and variable across IRFs or focus on one Hospital Acquired Infection (HAI) measure instead of all three CDC NHSN infection measures; CAUTI, MRSA, and CDI.

Response: We appreciate commenters' concern about the usefulness of the HAI measures given the low incidence rates in IRFs. The HAI measures currently on IRF Compare and those being proposed for public reporting support the goals of the National Quality Strategy, the CMS Quality Strategy, the HHS HAI Action Plan (*https://health.gov/hcq/prevent-hai-action-plan.asp*), and the Hospital Acquired Condition (HAC) Reduction Program. It is both a CMS and an HHS priority to ensure the delivery of high quality, patient-centered, and safe care across all care settings.

All of the HAI measures are fully endorsed by NQF for the IRF setting. The CAUTI measure is highly relevant to IRFs because urinary catheters are commonly used in the IRF setting. Healthcare-associated MRSA infections occur frequently in patients whose treatment involves the use of invasive devices, such as catheters. Older adults and patients in health care settings are most vulnerable to MRSA infections, as these patients may have weakened immune systems. CDIs are increasing in all health care facilities, and the IRF population is highly vulnerable to CDI. Readers can refer to additional information regarding the clinical significance of the MRSA and CDI measures in FY 2015 IRF PPS final rule (79 FR 45911 through 45913).

Even if the incidence rates may be low for these measures in IRFs, we have observed variability among facilities. We believe it is important to report data on HAIs acquired during the IRF stay because these infections are associated with increased cost, hospital length of stay, morbidity, and mortality. However, we appreciate the feedback and will continue to monitor IRF performance across all quality measures and reassess reporting certain measures in our QRPs.

Comment: One commenter suggested CMS include the total number of pressure ulcers and the observed rate of pressure ulcers for the measure Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) in the Provider Preview reports to support IRFs in validating their information.

Response: We appreciate the commenter's recommendation and will take it into consideration as we continue to make refinements to IRF Compare.

Comment: A commenter expressed concern regarding providers' ability to review CDC NHSN measure results prior to public display on IRF Compare due to timing and system issues.

Response: We acknowledge the commenter's concerns and are working closely with CDC to ensure provider access to timely and appropriate reports with accurate data prior to public display. In response to the various CDC NHSN systems issues providers experienced in late 2016 and early 2017, we have suppressed public display of the CDC NHSN CAUTI and CLABSI measure results on IRF Compare until such time as we are certain we can post accurate data. We would like to assure providers that they will be given the

opportunity to review any corrected data for a full 30 days, prior to the public posting of that data. We will notify providers when we are ready to add CAUTI and CLABSI measure results back to IRF Compare through normal channels of communications such as listserv notices, IRF QRP Web site postings, etc. Furthermore, given the systems issues that have arisen to date, we are considering any potential effect on provider compliance, and factoring this into our analysis.

Comment: One commenter expressed concern that the measures on the IRF Compare are not discernable and relevant to the general public, and questioned whether differences in quality that are displayed are clinically meaningful and distinguishable between high- and low-quality providers.

Response: We appreciate the commenter's feedback. We respectfully disagree that there is not enough variability to distinguish between high- and low-quality providers. Most of the measures are NQF-endorsed and go through a rigorous vetting process including analysis of data regarding variability, validity, and reliability. Reporting these measures encourages providers to strive for the highest quality of care. The measures currently on IRF Compare or proposed for public reporting support the goals of the National Quality Strategy, the CMS Quality Strategy, the HHS HAI Action Plan, and the HAC Reduction Program. It is both a CMS and an HHS priority to ensure the delivery of high quality, patient-centered, and safe care across all care settings.

Comment: A few commenters recommended CMS delay the public display of quality measures until at least a full twelve months of data has been collected and providers are able to review and correct the information on these measures. In addition, one commenter suggested CMS could use case-mix index, length of stay efficiency, Functional Improvement Measure (FIM) change, and discharge FIM in public reporting because the data is easily available to CMS and provides a good source of comparison between IRF providers.

Response: We acknowledge commenters' suggestions and note that the recommendations align with the current process for public display of quality measures. That is, data for the quality measures in the IRF QRP is collected for at least twelve months before it is available in confidential feedback reports. In addition, providers have the ability to review and correct their data prior to public display using Review and Correct reports. Subsequently, the Provider Preview reports will be available after the data correction deadline has passed for the last quarter of the reporting period. IRF Compare currently provides additional facility-level information on the medical conditions treated in the IRF over the last year. The quality of patient care that IRFs provide to patients can vary from facility to facility. IRF Compare reports information on over 1,100 facilities across the nation and allows consumers to obtain information on the quality of care each facility provides. They can compare IRFs based on important indicators of quality. The information can assist them to make more informed decisions. In regard to comparison data, we will take the commenter's suggestions into consideration for future updates to IRF Compare.

Final Decision: After consideration of the public comments we received, we are finalizing our proposals as proposed to begin publicly reporting in CY 2018 the following two assessment-based measures pending the availability of the data: ''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), and ''Application of Percent of Residents Experiencing One or More Falls with Major Injury'' (NQF #0674), as well as the following four claims-based measures: ''Medicare Spending Per Beneficiary—PAC IRF QRP'', ''Discharge to Community—PAC IRF QRP'', ''Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP'', and ''Potentially Preventable Within Stay Readmission Measure for IRFs''. We are finalizing our proposals to remove the claims-based measure ''All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from IRFs'' from the IRF QRP and from public display by October 2018. We are also finalizing our proposals to remove the assessment-based measure ''Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay)'' (NQF #0678) and replace it with a modified version of the measure entitled ''Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury'' from the IRF QRP and public reporting by October 2020.

P. Mechanism for Providing Feedback Reports to IRFs

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 sections 1899B(c)(1) and (d)(1) of the Act, beginning 1 year after the specified application date that applies to such measures and PAC providers. In the FY 2017 IRF PPS final rule (81 FR 52131), we finalized processes to provide IRFs the opportunity to review their data and information using confidential feedback reports that will enable IRFs to review their performance on the measures required under the IRF QRP. Information on how to obtain these and other reports available to the IRF can be found at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Public-Reporting.html.* We did not propose any changes to this policy.

We received one comment on this topic, which is summarized below.

Comment: One commenter recommended an alternative mechanism, QualityNet, for providing confidential feedback reports to post-acute care providers, including IRFs.

Response: We appreciate the commenter's suggestion and will take this into consideration in future public reporting development for the IRF QRP and other post-acute care QRPs.

Q. Method for Applying the Reduction to the FY 2018 IRF Increase Factor for IRFs That Fail To Meet the Quality Reporting Requirements

As previously noted, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction of the applicable market basket increase factor for IRFs that fail to comply with the quality data submission requirements. In compliance with section 1886(j)(7)(A)(i) of the Act, we proposed to apply a 2-percentage point reduction to the applicable FY 2018 market basket increase factor in calculating a proposed adjusted FY 2018 standard payment conversion factor to apply to payments for only those IRFs that failed to comply with the data submission requirements. As previously noted, application of the 2-percentage point reduction may result in an update that is less than 0.0 for a fiscal year and in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Also, reporting-based reductions to the market basket increase factor will not be cumulative; they will only apply for the FY involved.

We invited public comment on the proposed method for applying the reduction to the FY 2018 IRF increase factor for IRFs that fail to meet the quality reporting requirements. We did not receive any comments on this proposal.

Final Decision: We are finalizing our proposed method for applying the

reduction to the FY 2018 IRF increase factor for IRFs that fail to meet the quality reporting requirements.

Table 12 shows the calculation of the adjusted FY 2018 standard payment conversion factor that will be used to compute IRF PPS payment rates for any IRF that failed to meet the quality reporting requirements for the applicable reporting period(s).

TABLE 12—CALCULATIONS TO DETERMINE THE ADJUSTED FY 2018 STANDARD PAYMENT CONVERSION FACTOR FOR IRFS THAT FAILED TO MEET THE QUALITY REPORTING REQUIREMENT

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for FY 2017	$15,708
Increase Factor for FY 2018 (1.0 percent), as required by section 1886(j)(3)(C)(iii) of the Act, and further reduced by 2 percentage points for IRFs that failed to meet the quality reporting requirement	× 0.9900
Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0007
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9976
Adjusted FY 2018 Standard Payment Conversion Factor	= $15,524

XIV. Miscellaneous Comments

Comment: Commenters suggested that CMS be more transparent about the methodology used to update the facility-level adjustments and the implementation schedule of these updates.

Additionally, the commenters suggested that we establish a three-year minimum interval or percentage change threshold in the methodology used to update these factors.

Response: As we did not propose any changes to the facility-level adjustments, these comments are outside the scope of the proposed rule. We reiterate our belief that it is better for the overall efficiency of the IRF PPS to update the facility-level adjustment factors whenever it appears that the benefits of updating (in terms of improved accuracy of payment rates) outweigh the costs (in terms of less stability in the annual payment rates), rather than to specify an exact period or threshold for updating the adjustment factors. At such time as we determine that the data support updating the adjustment factors or changes in the methodology, we will make our findings available through the rulemaking process.

Comment: One commenter stated that CMS should not remove G72.81—Critical illness myopathy from the presumptive compliance list.

Response: We did not propose to remove G72.81—Critical illness myopathy from the presumptive compliance list and are not doing so in this final rule.

Comment: Two commenters recommended that CMS include the applicable 7th character for ''subsequent encounter'' for diagnosis codes on the presumptive compliance list. The commenters stated that IRF providers should follow all official ICD–10–CM coding values, regardless of payer. These commenters stated that including the subsequent encounter 7th character would eliminate the need for IRFs to keep up with multiple sets of coding rules.

Response: We appreciate the feedback from the commenters regarding the use of the 7th character for subsequent encounter for the presumptive methodology. We will consider the commenters' suggestion to consider the 7th character ''D''—subsequent encounter for certain injury codes on the list in future rulemaking.

Comment: One commenter requested the removal of the following codes as exclusions from the IGC list:

- S06.2X—(subcategory) Diffuse traumatic brain injury,
- S06.309A Unspecified focal traumatic brain injury, with loss of consciousness of unspecified duration, initial encounter.
- S06.309D Unspecified focal traumatic brain injury, with loss of consciousness of unspecified duration, subsequent encounter.
- S06.309S Unspecified focal traumatic brain injury, with loss of consciousness of unspecified duration, sequel.

Response: These codes were not listed as code exclusions on the proposed IGC lists, nor are they listed as code exclusions on the IGC lists that we are finalizing in this final rule. In addition, the codes S06.2X0A—Diffuse traumatic brain injury without loss of consciousness, initial encounter and S06.2X0S—Diffuse traumatic brain injury without loss of consciousness, sequela were listed on the proposed presumptive compliance list and are listed on the presumptive compliance list that we are finalizing in this final rule. If the commenter intended to refer to the code exclusion S06.9X9A—Unspecified intracranial injury with loss of consciousness of unspecified duration, initial encounter, which we are retaining as an excluded code under ''IGC Brain Dysfunction—0002.22 Traumatic, Closed Injury'' on the IGC lists that we are finalizing in this final rule, then we refer readers to section X.E. of this final rule for a discussion of code S06.9X9A.

Comment: One commenter stated that the proposed rule did not address the inclusion of recreational therapy in the case mix of therapies which are traditionally offered for selection by rehabilitation physicians for inclusion in the therapies order as medically necessary for patients of IRFs. The commenter encouraged us to include recreational therapy as one of covered therapy services (speech-language therapy, occupational therapy, physical therapy, and prosthetics/orthotics) in IRFs.

Response: As we did not propose any changes to the IRF coverage requirements in § 412.622(a)(3), (4), and (5) that would affect any of the requirements described in chapter 1, section 110 of the Medicare Benefit Policy Manual (Pub. L. 100–02), this comment is outside the scope of the proposed rule. As recreational therapy is generally less expensive for an IRF to provide than physical therapy, occupational therapy, or speech-language therapy, we believe that it would, in practice, replace many of these important core therapy services if it were included in the list of therapies that may be used to demonstrate the intensity of therapy provided in an IRF. We do not believe that recreational therapy services should replace the provision of any of the four core skilled therapy services (physical therapy, occupational therapy, speech-language therapy, and prosthetics/orthotics). Thus, we believe it should be left to each individual IRF to determine whether offering recreational therapy is the best way to achieve the desired patient care outcomes. As we have stated previously in the FY 2014 IRF PPS final rule (78 FR 47921), recreational therapy is a covered service in IRFs when the medical necessity is

well-documented by the rehabilitation physician in the medical record and is ordered by the rehabilitation physician as part of the overall plan of care for the patient. Recreational therapy may be offered as an additional service above and beyond the core skilled therapy services used to demonstrate the provision of an intensive rehabilitation therapy program, but may not replace one of these therapies.

Comment: One commenter expressed concerns that the presumptive methodology specifications might not be appropriately counting patients' comorbidities, as required by section 115 of the Medicare, Medicaid and SCHIP Extension Act of 2007, because the presence of an etiologic diagnosis exclusion on the IRF–PAI will cause the case to fail the presumptive methodology, and the algorithm does not proceed further to examine the comorbidities. This commenter requested that we review and modify the specifications and software, as needed.

Response: As we did not propose any changes to the presumptive methodology specifications, this comment is outside the scope of the proposed rule. However, section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 requires comorbidities to be included with respect to an IRF's 60 percent rule compliance percentage, not the presumptive compliance methodology specifically. Even though an individual case may fail to meet the requirements under the presumptive methodology if an excluded etiologic diagnosis is present, this does not mean that the IRF is out of compliance with the 60 percent rule. Rather, the IRF would undergo medical review, which would assess all relevant factors, including comorbidities.

Comment: One commenter reiterated a recommendation from MedPAC's March 2016 Report to Congress, Chapter 9 (available at *http://www.medpac.gov/-documents-/reports*) that we should analyze patterns of coding across IRFs and reassess the inter-rater reliability of the IRF–PAI.

Response: This comment addresses data monitoring activities that were not discussed in the proposed rule, and are therefore outside the scope of the rule. However, we have shared this recommendation from MedPAC's March 2016 Report to Congress, Chapter 9 with the appropriate components within CMS for their consideration.

XV. Provisions of the Final Regulations

In this final rule, we are adopting the provisions set forth in the FY 2018 IRF PPS proposed rule (82 FR 20690). Specifically:

- We will update the FY 2018 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data in a budget-neutral manner, as discussed in section IV. of this final rule.
- As established in the FY 2015 IRF PPS final rule (79 FR 45872 at 45882), the facility-level adjustments will remain frozen at FY 2014 levels for FY 2015 and all subsequent years (unless and until we propose to update them again through future notice-and-comment rulemaking), as discussed in section V. of this final rule.
- We will update the FY 2018 IRF PPS payment rates by the market basket increase factor, as required by section 1886(j)(3)(C)(iii) of the Act, as described in section VI. of this final rule.
- We will update the FY 2018 IRF PPS payment rates by the FY 2018 wage index and the labor-related share in a budget-neutral manner, as discussed in section VI. of this final rule.
- We will calculate the final IRF standard payment conversion factor for FY 2018, as discussed in section VI. of this final rule.
- We will update the outlier threshold amount for FY 2018, as discussed in section VII. of this final rule.
- We will update the CCR ceiling and urban/rural average CCRs for FY 2018, as discussed in section VII. of this final rule.
- We will remove the 25 percent payment penalty for IRF–PAI late transmissions, as discussed in section VIII. of this final rule.
- We will adopt revisions to the IRF–PAI to remove the voluntary swallowing status item, as discussed in section IX. of this final rule.
- We will adopt refinements to the presumptive compliance methodology ICD–10–CM diagnosis codes, as discussed in section X. of this final rule.
- We will consider the comments we received in response to our solicitation regarding the criteria used to classify facilities for payment under the IRF PPS, as discussed in section X. of this final rule.
- We will adopt the subregulatory process for certain updates to the presumptive methodology diagnosis code lists, as discussed in section XI. of this final rule.
- We will adopt the use of height/weight items on the IRF–PAI to determine patient BMI greater than 50 for cases of lower extremity single joint replacement under the presumptive methodology, as discussed in section XII. of this final rule.
- We will adopt revisions and updates to measures and reporting requirements under the IRF QRP in accordance with sections 1886(j)(7) and 1899B of the Act, as discussed in section XIII. of this final rule.

XVI. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This final rule makes reference to associated information collections that are not discussed in the regulation text contained in this document.

B. Collection of Information Requirements for Updates Related to the IRF QRP

Failure to submit data required under section 1886(j)(7)(C) and (F) of the Act will result in the reduction of the annual update to the standard federal rate for discharges occurring during such fiscal year by 2 percentage points for any IRF that does not comply with the requirements established by the Secretary. At the time that this analysis was prepared, 80, or approximately 7 percent, of the 1,137 active Medicare-certified IRFs did not receive the full annual percentage increase for the FY 2017 annual payment update determination. Information is not available to determine the precise number of IRFs that will not meet the requirements to receive the full annual percentage increase for the FY 2018 payment determination.

We believe that the burden associated with the IRF QRP is the time and effort associated with data collection and reporting. As of February 1, 2017, there

are approximately 1,137 IRFs currently reporting quality data to CMS. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 13.

TABLE 13—U.S. BUREAU OF LABOR STATISTICS' MAY 2016 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Overhead and fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Registered Nurse (RN)	29–1141	$34.70	$34.70	$69.40
Licensed Practical and Licensed Vocational Nurses (LVN)	29–2061	21.56	21.56	43.12
Respiratory Therapists (RT)	29–1126	29.15	29.15	58.30
Speech-Language Pathologists (SLP)	29–1127	37.60	37.60	75.20
Occupational Therapists (OT)	29–1122	40.25	40.25	80.50
Psychologist	19–3030	38.77	38.77	77.54

As discussed elsewhere, this rule finalizes the proposal to adopt one new pressure ulcer measure that has been specified under section 1899B(c)(1)(C) of the Act, beginning with the FY 2020 IRF QRP (see section XIII.G.1 of this final rule). The measure will be calculated using data elements that are currently included in the IRF–PAI. 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 requiring that IRFs report certain standardized patient assessment data beginning with the FY 2019 IRF QRP (see section XIII.J of this final rule). We defined 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 are 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 1899B(m) of the Act, the Paperwork Reduction Act does not apply to the specific changes in the collection of information described in this final rule. The requirement and burden will be submitted to OMB for review and approval when the modifications to the IRF–PAI are not used to achieve standardization and are not exempt from the requirements under section 1899B(m) of the Act.

These changes to the collections of information arise from section 2(a) of the IMPACT Act, which added new section 1899B of the Act. That section requires IRFs to report standardized patient assessment data, data on quality measures, and data on resource use and other measures.

As noted in section VIII of this final rule, we are removing item 27 (Swallowing Status) from the IRF–PAI on admission and discharge, which will result in a 0.5 minute reduction in clinical staff time to report data.

We are also removing the All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from IRFs (NQF #2502). This is a claims-based measure, and IRFs will still be required to submit the claims on which this measure is calculated. Therefore, we believe the IRF QRP burden estimate is unaffected by the proposed removal of this measure.

Adoption of the Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury measure will result in the removal of some data items related to pressure ulcer assessment that we believe are duplicative or no longer necessary. As a result, the estimated burden and cost for IRFs to report the updated version of the measure will be reduced from the burden and cost to report the current version of the measure. Specifically, we believe that there will be a 5-minute reduction in clinical staff time to report data, and we believe the items being removed would be completed by RNs. In addition, the removal of item 27 (Swallowing Status) on both admission and discharge will result in a 0.5 minute reduction in clinical staff time to report data. We believe that these swallowing items would be completed by RNs (approximately 75 percent of the time) and SLPs (approximately 25 percent of the time). We estimate 402,311 discharges from 1,137 IRFs annually. This equates to 36,879 hours (0.0917 hours × 402,311 discharges) decrease in burden for all IRFs. Given 5.4 minutes of RN time and 0.1 minutes of SLP time, completing an average of 354 IRF–PAIs per provider per year, and the wages listed in Table 13, we estimated the total cost would be reduced by $2,255 per IRF annually, or $2,564,2230 for all IRFs annually. This decrease in burden will be accounted for in the information collection under OMB control number (0938–0842) which expires July 31, 2017. We have sent the revised information collection request to OMB for review and approval.

In section XIII.J. of this final rule, we are finalizing requirements related to the reporting of standardized patient assessment data beginning with the FY 2019 IRF QRP. The data elements being finalized for the FY 2019 IRF QRP with respect to the Functional Status and Medical Condition and Comorbidity categories are already included on the current IRF–PAI assessment. Therefore, there is no new burden associated with the standardized patient assessment data being finalized for the IRF QRP in this final rule.

However, as noted in section XIII.J of this final rule, we are not finalizing our proposal to require IRFs to submit data on 24 new standardized patient assessment data elements on IRF admissions and 24 new standardized patient assessment data elements on IRF discharges. This results in a reduction to the burden estimate that appeared in the proposed rule. We refer readers to the FY 2018 IRF PPS proposed rule (82 FR 20743 through 20745) for a discussion of our burden estimates for these proposals.

In summary, no new burden related to standardized patient assessment data is being added to the IRF–PAI, which is a reduction from the burden estimate in the proposed rule. Given the 5.5-minute

reduction in burden for items being removed from the IRF PAI, the overall cost associated with changes to the IRF QRP is a reduction of 36,879 hours in burden for all IRFs. This equates to a reduction of $2,255.26 per IRF annually, or $2,564,229.74 for all IRFs annually. 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 final rule. We are, however, setting out the burden as a courtesy to advise interested parties of the proposed actions' time and costs and refer readers to section XV of this final rule for the regulatory impact analysis (RIA). The requirement and burden will be submitted to OMB for review and approval when the modifications to the IRF–PAI are not used to achieve standardization and are not exempt from the requirements under section 1899B(m) of the Act.

We received several comments about the collection of information requirements associated with the IRF QRP.

Comment: Several commenters supported the removal of item 27 (swallowing status) from the IRF–PAI, stating that they appreciate the decrease in administrative burden.

Response: We appreciate the commenters' support for the removal of item 27 (swallowing status) from the IRF–PAI.

Comment: We received a number of comments related to training, data specifications, and support that CMS has provided related to the implementation of the quality measures and standardized patient assessment data elements. Commenters stated that the guidance has been inconsistent and that CMS has not provided the necessary responses to questions from IRFs, and that due to inconsistencies, the commenters are concerned about the accuracy and reliability of the data.

One commenter was concerned that the reliability of data was threatened by the data elements changing frequently, by different data elements being used for quality and payment, citing an example of functional status data elements, and by confusion over entering dashes for voluntary items. Several commenters requested that CMS provide training materials and data specifications in advance of implementation.

Response: With regard to training and provider support, we acknowledge the importance of thorough and comprehensive training. We intend to provide both in-person and webinar-based training in advance of the IRF–PAI Version 2.0 release on October 1, 2018. When new quality measure data elements are implemented, we examine early data that is submitted in order to look for possible issues, such as unexpected patterns and inconsistent data for 2 or more items. If we identify any issues, we address them in updated training materials. For example, we examined the first three months of functional status data, and we identified areas of coding that could be clarified and scheduled a supplemental training via webinar. Information about and materials from each IRF QRP training are posted on the IRF–QRP Training Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Training.html.*

We disagree with the commenters' suggestion that guidance has been inconsistent and that data collected has been unreliable. We maintain an IRF QRP help desk that responds to providers' data element coding questions, and keep a repository of past questions and responses in order to address questions in a consistent manner. Between June 1, 2016 and June 1, 2017, we responded to more than 1,000 inquiries. The questions submitted by IRFs have provided us with various ''real life'' scenarios and these questions have helped us to create new examples for training, new coding tips that reinforce key training issues and we have updated definitions on the IRF–PAI to ensure the guidance is shared with all IRFs. For example, we received several inquiries regarding non-verbal communication, and based on that input, we modified the IRF–PAI definition in the IRF–PAI Training Manual to clarify that both verbal and non-verbal communication are considered in coding the item.

With regard to the comments about different functional items being used for payment than those used in the IRF QRP, we refer the reader to the discussion in the FY 2016 IRF PPS final rule (80 FR 47086 through 47120) about the differences between the CARE function items and the FIM® items.

With regard to the comments related to the data specifications and the use of dashes, we post data specifications and errata on the CMS Web site so that vendors and providers are able to review and understand the valid data codes for all items and the associated requirements: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.* We wish to note that upon internal review, we believe that the data specifications have been misinterpreted by some IRFs based on questions that have been submitted to the IRF QRP Help Desk, and we would like to make clear that the information and Section 9 (Required/Voluntary IRF–PAI Items) of the IRF–PAI Training Manual is correct.

Comment: We received several comments related to the burden associated with the IRF–PAI. Although we did not solicit feedback on the burden associated with the measures finalized in the FY 2016 IRF PPS final rule (80 FR 47100 through 47120), including functional status measures, or the FY 2017 IRF PPS final rule (81 FR 52080 through 52135), we received several comments about the increase in the length of the IRF–PAI over the last several releases, particularly since the IMPACT Act of 2014. Commenters noted that additions and changes to the IRF–PAI require extensive staff training time and operational procedures that impose a significant burden on providers. Some commenters were concerned that additional IRF–PAI requirements would take away from patient care time, especially in facilities with multiple admissions and discharges per day.

One commenter appreciated the advanced release of the proposed item sets and specification documents for review, while another stated that these documents were difficult to locate on the Web site.

Response: We recognize the commenter's concerns pertaining to burden being added to the IRF QRP in fulfillment of the requirements of the IMPACT Act. At every step of the process of standardizing the IRF–PAI with other PAC assessment instruments in order to meet the requirements of the IMPACT Act, CMS has been keenly aware of the need to minimize additional burden on providers. We make efforts to offset or decrease burden, as evidenced by the 5 minute reduction of items related to pressure ulcer assessment that we believe are duplicative or no longer necessary.

We are sensitive to the issue of burden associated with data collection and acknowledge the commenters' concerns about taking away from patient care time. In ongoing item development work to identify and test standardized patient assessment data elements, we are seeking data elements that will capture the unique environment of the IRF PAC setting. This includes data elements that can help establish the required amount of provider time at the bedside, and intensive nature of patient care provided in IRFs, and help IRFs make care decisions that are uniquely tailored to each patient. Ideal data elements would leverage information that is already collected or documented

in IRFs as part of standard clinical practice, while providing valuable information to inform care planning, clinical decision-making, care transitions and resource utilization.

With regard to the burden added to IRF–PAI versions finalized in previous rules, we refer the reader to our discussion of burden due to data set revisions, data collection, or training of staff due to the revisions to the IRF–PAI in the FY 2016 IRF PPS final rule (80 FR 47129 through 47131), and in the FY 2017 IRF PPS final rule (81 FR 52133 through 52135).

Though we recognize that new IRF–PAI items will require additional activities and efforts by providers, we would like to clarify that burden estimates are intended to reflect only the time needed to complete IRF–PAI items, independent of clinical time spent assessing the patient. Similarly, burden estimates are not intended to reflect costs of training and operational processes; these are considered part of the operating costs for an IRF. It should be noted that with each assessment release, we provide free software to our providers that allows for the completion and submission of any required assessment data. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product are available on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.*

With regard to the posting of the proposed item set and specifications, we strive to be transparent and consistent in posting item set information to the IRF–PAI and IRF QRP Manual Page at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-PAI-and-IRF-QRP-Manual.html,* and posting specifications to the IRF QRP Measures Information Page at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/IRF-Quality-Reporting-Program-Measures-Information-.html.* We encourage the reader to check the IRF QRP Spotlight and Announcement page for updates at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Spotlights-Announcements.html.*

Comment: One commenter commended CMS for ensuring robust and accurate quality reporting, but had concerns that many IRF providers do not have effective EHRs and that the proposed revisions to the IRF–PAI would require extra staff to collect, process, and transmit the necessary data. The commenter suggested that CMS did not provide an easy mechanism to collect, process and transmit the necessary data.

Response: While we support the use of EHRs, we do not require that providers use EHRs to populate assessment data. We disagree with the commenter's suggestion that CMS does not provide a mechanism for collecting, processing and transmitting data, and we note that with each assessment release, we provide free software to providers that allows for the completion and submission of any required assessment data. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Feefor-Service-Payment/InpatientRehabFacPPS/Software.html.*

Comment: One commenter had concerns about smaller units in rural areas, suggesting that they would be unable to increase staff to accommodate for increased data collection.

Response: We appreciate the concern about the increase in staff to accommodate for increased data collection in rural areas, and are sensitive to the challenges that small and rural facilities face. Taking into consideration the increase in burden that additional data collection may place on all facilities, we have decided to delay the adoption of the standardized patient assessment data elements to fulfill the requirements of the IMPACT Act in the categories of cognitive function and mental status, special services, treatments, and interventions, and impairments. However, we note that high quality care should be provided wherever patient services are administered.

As noted in section XIII.J in this final rule, after consideration of public comments, we will not be finalizing the proposals that would add standardized patient assessment data elements related to the categories of cognitive function; special services, treatments and interventions; and impairments to the IRF–PAI effective October 1, 2018. The data elements that satisfy the categories of functional status and medical conditions and comorbidities are already being collected on the IRF–PAI and do not add burden.

Therefore, given the 5.5-minute reduction in burden for items being removed from the IRF–PAI, the burden related to the IRF QRP is reduced by $2,255.26 per IRF annually, or $2,564,229.74 for all IRFs annually.

XVII. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries (65 FR 69432) at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf,* effective March 26, 2012 and updated on February 26, 2016.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,100 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. We estimate that the net revenue impact of this final rule on all IRFs is to increase estimated payments

by approximately 1.0 percent. The rates and policies set forth in this final rule will not have a significant impact (not greater than 3 percent) on a substantial number of small entities. Medicare Administrative Contractors are not considered to be small entities. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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 final rule will impose no mandates on state, local, or tribal governments or on the private sector.

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. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This final rule is considered an EO 13771 deregulatory action. Details on the $2.6 million estimated net cost savings of this rule can be found in the preceding and subsequent analyses.

Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final 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 the published proposed rule will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this final rule. It is possible that not all commenters reviewed the proposed 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 comments received on the proposed rule would be a fair estimate of the number of reviewers of this final rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

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 $105.16 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm.* Assuming an average reading speed, we estimate that it would take approximately 3 hours for the staff to review half of this final rule. For each IRF that reviews the rule, the estimated cost is approximately $315 (3 hours × $105.16). Therefore, we estimate that the total cost of reviewing this regulation is $23,940 ($315 × 76 reviewers).

Accounting Statement

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 14, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. Table 14 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the updates presented in this final rule based on the data for 1,137 IRFs in our database. In addition, Table 14 presents the costs associated with the new IRF QRP requirements for FY 2018.

TABLE 14—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Change in Estimated Transfers from FY 2017 IRF PPS to FY 2018 IRF PPS	
Annualized Monetized Transfers.	$75 million.
From Whom to Whom?	Federal Government to IRF Medicare Providers.
FY 2018 Cost to Updating the Quality Reporting Program	
Cost for IRFs to Submit Data for the Quality Reporting Program. *	Reduction of $2.6 million.

* Costs associated with the submission of data for the quality reporting program will occur in 2018 and likely continue in the future years.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332), sec. 1206 of Pub. L. 113–67, sec.112 of Pub. L. 113–93, and sec. 231 of Pub. L. 114–113.

■ 2. Section 412.614 is amended by revising paragraphs (d) heading, (d)(1), and (e) to read as follows:

§ 412.614 Transmission of patient assessment data.

* * * * *

(d) *Failure to submit complete and timely IRF–PAI data, as required under paragraph (c) of this section*—(1) *Medicare Part-A fee-for-service.* (i) A given Medicare Part-A fee-for-service IRF claim will not be accepted and processed for payment until a corresponding IRF–PAI has been received and accepted by CMS.

(ii) [Reserved]

* * * * *

(e) *Exemption to the consequences for transmitting the IRF–PAI data late for Medicare Part C (Medicare Advantage) patients.* CMS may waive the consequences of failure to submit complete and timely IRF–PAI data specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the forfeiture specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflect extensive damage to an inpatient facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

§ 412.624 [Amended]

■ 3. In § 412.624—

■ a. Amend paragraph (d)(4) by removing the reference ''paragraph (e)(2), (e)(3), (e)(4) and (e)(7), of this section,'' and adding in its place the reference ''paragraph (e)(2), (3), (4) and (6) of this section,'';

■ b. Remove paragraph (e)(6);

■ c. Redesignate paragraph (e)(7) as paragraph (e)(6);

■ d. Amend newly redesignated paragraph (e)(6)(ii) by removing the reference ''paragraph (e)(7)(i)(A) and (e)(7)(i)(B) of this section'' and adding in its place the reference ''paragraph (e)(6)(i)(A) and (B) of this section''; and

■ e. Amend paragraph (f)(2)(v) by removing the reference ''paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section'' and adding in its place the reference ''paragraphs (e)(1), (2), (3), (4), and (6) of this section''.

■ 4. Section 412.634 is amended by revising paragraphs (b)(1), (c)(1), (f)(1) and (2) to read as follows:

§ 412.634 Requirements under the Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP).

* * * * *

(b) * * *

(1) IRFs must submit to CMS data on measures specified under section 1886(j)(7)(D), 1899B(c)(1), and 1899B(d)(1) of the Act, as applicable. Such data must be submitted in the form and manner, and at a time, specified by CMS.

* * * * *

(c) * * *

(1) An IRF may request and CMS may grant exceptions or extensions to the measures data or standardized patient assessment data reporting requirements, for one or more quarters, when there are certain extraordinary circumstances beyond the control of the IRF.

* * * * *

(f) * * *

(1) IRFs must meet or exceed two separate data completeness thresholds: One threshold set at 95 percent for completion of required quality measures data and standardized patient assessment data collected using the IRF–PAI submitted through the QIES, and a second threshold set at 100 percent for measures data collected and submitted using the CDC NHSN.

(2) These thresholds (95 percent for completion of required quality measures data and standardized patient assessment data on the IRF–PAI; 100 percent for CDC NHSN data) will apply to all measures and standardized patient assessment data requirements adopted into the IRF QRP.

* * * * *

Dated: July 26, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 27, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–16291 Filed 7–31–17; 4:15 pm]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2017–0028; FF09M21200–178–FXMB1231099BPP0]

RIN 1018–BB73

Migratory Bird Hunting; Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2018–19 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, describes the proposed regulatory alternatives for the 2018–19 duck hunting seasons, and requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* You may comment on the proposed regulatory alternatives for the 2018–19 season until September 5, 2017. You may comment on the draft environmental assessment to establish a framework for general swan hunting season in the Atlantic, Mississippi, and Central Flyways until October 15, 2017. Comments on the information collection requirements must be received by September 5, 2017. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments on the proposed frameworks by January 15, 2018. Tribes must submit proposals and related comments on or before December 1, 2017.

Meetings: The SRC will meet to consider and develop proposed regulations for the 2018–19 migratory game bird hunting seasons on October 17–18, 2017. Meetings on both days will commence at approximately 8:30 a.m.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2017–0028.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2017–0028; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that your entire submission—including any personal identifying information—will be posted on the Web site. See the Public Comments section, below, for more information.

Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803 (mail); or *info_coll@fws.gov* (email). Please reference OMB Control Number 1018–BB73 in the subject line of your comments.

Meetings: The October 17–18, 2017, SRC meeting will be at the U.S. Fish and Wildlife Service, 5600 American Boulevard, Bloomington, MN 55437.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

New Process for the Annual Migratory Game Bird Hunting Regulations

As part of DOI's retrospective regulatory review, 2 years ago we developed a schedule for migratory game bird hunting regulations that is more efficient and provides hunting season dates much earlier than was possible under the old process. The new process makes planning much easier for the States and all parties interested in migratory bird hunting. Beginning in the summer of 2015, with the development of the 2016–17 hunting seasons, we started promulgating our annual migratory game bird hunting regulations using a new schedule that combines the previously used early- and late-season regulatory processes into a single process. We make decisions for harvest management based on predictions derived from long-term biological information and established harvest strategies and, therefore, can establish migratory bird hunting seasons much earlier than the system we used for many years. Under the new process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then finalize those frameworks a few months later, thereby enabling the State agencies to select and publish their season dates in early summer. This proposed rule is the first in a series of proposed and final rulemaking documents for the establishment of the 2018–19 hunting seasons.

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory game bird management is a cooperative effort of State, Tribal, and Federal governments.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the

Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the general public.

The process for adopting migratory game bird hunting regulations, located in title 50 of the Code of Federal Regulations (CFR) at part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

Service Migratory Bird Regulations Committee Meetings

The SRC will conduct an open meeting on October 17–18, 2017, to review information on the current status of migratory game birds and develop 2018–19 migratory game bird regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about these meetings.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this August and September. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: August 31 and September 1, 2017; The Westin Annapolis, 100 Westgate Circle, Annapolis, MD.

Mississippi Flyway Council: August 24–25, 2017; Park Place Hotel, 300 East State St., Traverse City, MI 49684.

Central Flyway Council: August 30–31, 2017; Hilton Garden Inn Manhattan and Manhattan Conference Center, 410 South 3rd Street, Manhattan, KS.

Pacific Flyway Council: August 25, 2017; Hotel RL Spokane at the Park, 303 W. North River Drive, Spokane, WA.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2018–19 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20. For the 2018–19 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We annually publish definitions of flyways and management units, and a description of the data used in and the factors affecting the regulatory process (see May 30, 2017, **Federal Register** (82 FR 24786) for the latest definitions and descriptions).

Regulatory Schedule for 2018–19

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2018–19 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates. All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Youth Hunt
   - x. Mallard Management Units
   - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Early Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, so remaining numbered items will be discontinuous, making the list appear incomplete.

The proposed regulatory alternatives for the 2018–19 duck hunting seasons are contained at the end of this document. We plan to publish final regulatory alternatives in mid-August. We plan to publish proposed season frameworks in mid-December 2017. We plan to publish final season frameworks in late February 2018.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2018–19 duck hunting seasons. This proposed rulemaking also describes

other recommended changes or specific preliminary proposals that vary from the 2017–18 regulations and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2018–19 season. We seek additional information and comments on this proposed rule.

Consolidation of Rulemaking Documents

For administrative purposes, this document consolidates the notice of our intent to establish open migratory game bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (Idaho, Oregon, Washington, Hawaii, and the Pacific Islands)—Nanette Seto, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Scott Carleton, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Albuquerque, NM 87102; (505) 248–6639.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Tom Cooper, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; (612) 713–5101.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, Virgin Islands, South Carolina, and Tennessee)—Laurel Barnhill, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Pam Toschik, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8610.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—Casey Stemler, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Pete Probasco, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Region 8 (California and Nevada)—Amedee Brickey, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825–1846; (916) 414–6480.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates, season length, and daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife-management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members. Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2018–19 migratory game bird hunting season should submit a proposal that includes: (1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations; (2) Harvest anticipated under the proposed regulations; and (3) Tribal capabilities to enforce migratory game bird hunting

regulations. For those situations where it could be shown that failure to limit Tribal harvest could seriously impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential steps taken to limit level of harvest.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2018–19 hunting season should submit their proposals no later than December 1, 2017. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Rulemaking Documents. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2017–18,'' with its corresponding April 7, 2017, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Before issuance of the 2018–19 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

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

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). We will use this analysis again for the 2018–19 season. This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer

days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. We also chose alternative 3 for the 2009–10 through 2017–18 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is generally conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This proposed rule contains existing and new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

The new reporting and recordkeeping requirements identified below must be approved by OMB:

(1) Tribes that wish to use the guidelines to establish special hunting regulations for the annual migratory game bird hunting season are required to submit a proposal that includes:

(a) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(b) Harvest anticipated under the proposed regulations; and

(c) Tribal capabilities to enforce migratory game bird hunting regulations.

(2) State and U.S. territory governments that wish to establish annual migratory game bird hunting seasons are required to provide the requested dates and other details for hunting seasons in their respective States or Territories.

Title: Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20.

OMB Control Number: 1018–XXXX.

Service Form Number: None.

Type of Request: Request for a new OMB Control Number.

Description of Respondents: State and Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Number of Annual Respondents: 82 (52 State governments and Territories and 30 Tribal governments).

Estimated Number of Annual Responses: 82.

Average Completion Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 328.

Estimated Annual Non-hour Burden Cost: None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803 (mail); or *info_coll@fws.gov* (email). Please reference OMB Control Number 1018–BB73 in the subject line of your comments.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private

entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2018–19 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to routine hunting and fishing activities.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority: The rules that eventually will be promulgated for the 2018–19 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

Dated: June 13, 2017.

Virginia H. Johnson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the 2017–18 frameworks are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2018–19 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. We have specific hunting strategies for species of special concern, such as black ducks, scaup, and pintails.

Atlantic, Mississippi, Central, and Pacific Flyways

The prescribed regulatory alternative for the Atlantic, Mississippi, Central, and Pacific Flyways is based on the status of mallard populations that contribute primarily to each Flyway. In the Atlantic Flyway, we set hunting regulations based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in the Northeast and the mid-Atlantic region). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America (Federal survey strata 13–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In the Pacific Flyway, we set hunting regulations based on the status and dynamics of western mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California, Oregon, Washington, and British Columbia (as based on State- or Province-conducted surveys).

For the 2018–19 season, we recommend continuing to use independent optimization to determine the optimal regulatory choice for each mallard stock. This means that we would develop regulations for eastern mallards, mid-continent mallards, and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this AHM decision

framework for western and mid-continent mallards in the July 24, 2008, **Federal Register** (73 FR 43290) and for eastern mallards in the July 20, 2012, **Federal Register** (77 FR 42920).

Supplemental Environmental Impact Statement (SEIS) Changes to the AHM Process

Since 1995, the Service and Flyway Councils have applied the principles of adaptive management to inform harvest management decisions in the face of uncertainty while trying to learn about system (bird populations) responses to harvest regulations and environmental changes. Prior to the timing and process changes necessary for implementation of SEIS 2013, the annual AHM process began with the observation of the system's status each spring followed by an updating of model weights and the derivation of an optimal harvest policy that was then used to inform a regulatory decision (*i.e.,* breeding population estimates were used with a policy matrix to determine optimal regulatory decisions). The system then evolves over time in response to the decision and natural variation in population dynamics. The following spring, the monitoring programs observe the status of the system and the iterative decision-making process continues forward in time. However, with the changes in decision timing specified by the SEIS, the post-survey AHM process will not be possible because monitoring information describing the system will not be available at the time the decision must be made. As a result, the optimization framework used to derive the current harvest policy can no longer calculate current and future harvest values as a function of the current system and model weights. To address this issue, we adjusted the optimization procedures beginning with the 2016–17 seasons to calculate harvest values conditional on the last observation of the system and regulatory decision.

Results and analysis of our work is contained in a technical report that provides a summary of revised methods and assessment results based on updated AHM protocols developed in response to the preferred alternative specified in the SEIS. The report describes necessary changes to optimization procedures and decision processes for the implementation of AHM for midcontinent, eastern, and western mallards, northern pintails, and scaup decision frameworks.

Results indicate that the necessary adjustments to the optimization procedures and AHM protocols to account for changes in decision timing are not expected to result in major changes to expected management performance for mallard, pintail, and scaup AHM. In general, pre-survey (or pre-SEIS necessary changes) harvest policies were similar to harvest policies based on new post-survey (or post-SEIS necessary changes) AHM protocols. We found some subtle differences in the degree to which strategies prescribed regulatory changes in the pre-survey policies with a reduction in the number of cells indicating moderate regulations. In addition, pre-survey policies became more liberal when the previous regulatory decisions were more conservative. These patterns were consistent for each AHM decision-making framework. Overall, a comparison of simulation results of the pre- and post-survey protocols did not suggest substantive changes in the frequency of regulations or in the expected average population size. These results suggest that the additional form of uncertainty that the change in decision timing introduces is not expected to limit our expected harvest management performance with the adoption of the pre-survey AHM protocols.

Since 2000, we have relied on an adaptive harvest management strategy for eastern mallards as the basis for setting the season lengths and total bag limits for duck hunting in the Atlantic Flyway. A drawback of this strategy is that the primary breeding range of eastern mallards is the northeastern United States, whereas eastern Canada is the origin of most other ducks (except wood ducks) that are harvested in the Atlantic Flyway. Due to the differences in their ranges, factors that affect the population status of eastern mallards do not necessarily have the same influence on those other duck species, potentially resulting in differing population trajectories. Poor performance by our eastern mallard population models is another drawback; they have consistently over-predicted the population size since 2009.

Consequently, we are working with the Atlantic Flyway Council to develop a new decision framework for determining annual duck hunting regulations in the Atlantic Flyway that will be based on the collective status of five representative duck species: mallard, wood duck, green-winged teal, ring-necked duck, and common goldeneye. These species represent the suite of waterfowl habitats that Atlantic Flyway agencies and partners are trying to conserve and protect, and together they comprise about 60 percent of the ducks harvested annually in the Atlantic Flyway. We plan to implement the new decision framework for the 2019–20 hunting season. If our current eastern mallard harvest strategy indicates that mallard harvest should be restricted before the new framework is adopted, we will implement appropriate restrictions (*e.g.,* adjust the Atlantic Flyway's daily bag limit for mallards accordingly).

A complete copy of the AHM report can be found on *http://www.regulations.gov* or at *http://www.fws.gov/migratorybirds/pdf/management/AHM/SEIS&AHMReportFinal.pdf.*

Final 2018–19 AHM Protocol

We will detail the final AHM protocol for the 2018–19 season in the supplemental proposed rule, which we will publish in late July (see Schedule of Biological Information Availability, Regulations Meetings and **Federal Register** Publications for the 2018–19 Seasons at the end of this proposed rule for further information). We will propose a specific regulatory alternative in December for each of the Flyways to use for their 2018–19 seasons after status information becomes available in late August 2017.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501; March 19, 2002).

For 2018–19, we propose to utilize the same regulatory alternatives that are in effect for the 2017–18 season (see accompanying table for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. Comments on the proposed alternatives will be accepted until July 15, 2017. Following receipt of public input, we will finalize the regulatory alternatives for each of the

Flyways for the 2018–19 seasons in mid-August 2017.

D. Special Seasons/Species Management

iv. Canvasbacks

From 1994–2015, we followed a canvasback harvest strategy whereby if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining an objective of 500,000 birds the following spring, the season on canvasbacks should be opened. A partial season would be allowed if the estimated allowable harvest was below that associated with a 1-bird daily bag limit for the entire season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

Since the existing harvest strategy relies on information that will not yet be available at the time we need to establish proposed frameworks under the new regulatory process, the canvasback harvest management strategy is not usable for the 2018–19 season and beyond. At this time we do not have a new harvest strategy to propose for use in the future. Thus, as we did for the 2016–17 and the 2017–18 seasons, we will review the most recent information on canvasback populations, habitat conditions, and harvests with the goal of compiling the best information available for use in making a harvest management decision. We will share these results with the Flyways during their fall meetings, with the intention of adopting a decision-making approach in October for the 2018–19 seasons. Over the next year, we will continue to work with the Flyway technical committees and councils to develop a new biologically based process for informing harvest management decisions for use in subsequent years.

8. Swans

Frameworks for swan hunting seasons in certain Atlantic and Central Flyway States (North Carolina, Virginia, Montana, North Dakota, and South Dakota) currently only allow the take of tundra swans. In recent years, some Interior Population (IP) trumpeter swans have been present during fall and winter in those States. This population has grown from 43 birds in 1968 to more than 27,000 in 2015, an annual growth rate of 14.4 percent. Given the rapid growth rate of the IP, it is likely that migrating and wintering trumpeter swan numbers will increase in the Atlantic, Mississippi, and Central Flyways. Tundra swans and trumpeter swans are very similar in appearance, particularly at a distance. At present, any hunter who mistakenly shoots a trumpeter swan during the tundra swan season is violating the law by taking a species for which no hunting season has been authorized. As their numbers continue to increase, more IP trumpeter swans will likely be present in tundra swan hunting areas during the hunting season; this situation would result in more hunters accidentally taking a trumpeter swan, making those hunters criminally liable for taking a protected species illegally. Thus, there is a need to address the potential for misidentification and accidental take of trumpeter swans that may arise with existing tundra swan hunting seasons.

We have prepared a draft Environmental Assessment (DEA) to assess the impacts of establishing a framework for hunting regulations to govern the take of both trumpeter and tundra swans in the portions of the Atlantic, Mississippi, and Central Flyways that currently have operational hunting seasons on Eastern Population tundra swans or may have in the future. The proposed action identified in this DEA would allow limited take of trumpeter swans, but only during hunting seasons established to provide opportunities to hunt tundra swans. New swan hunting seasons (*i.e.,* seasons in areas that are currently closed to swan hunting) would not be approved unless the requesting State demonstrates that >90 percent of the swans in the proposed hunt area are tundra swans.

The DEA is available for public review and may be found at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028 or from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**). We prepared this DEA in carrying out our responsibility to conserve migratory bird populations and to fulfill our responsibilities under NEPA. Comments will be accepted until October 15, 2017. Following receipt of public input, we will prepare a final environment assessment, which will help inform future decisions regarding regulation of swan hunting.

16. Doves

Last season (82 FR 24786; May 30, 2017), we approved an earlier opening date (fixed date of September 14) in Texas's South Dove Zone, which is about one week earlier (on average) than was previously allowed, and allowed split seasons in the Western Management Unit (WMU) so that the WMU could be consistent with the other dove management units regarding zoning and split seasons. We also considered, but did not approve, a recommendation for the Eastern Management Unit (EMU) to have a closing framework date of January 31, versus the current closing date of January 15. While we proposed and ultimately approved the Texas and WMU changes last season, we requested more information on the rationale and biological impacts for the EMU request. Both of the approved framework changes and the still-pending EMU recommendation require changes to the National Dove Harvest Management Strategy (Strategy). The previously approved changes are designed to provide more flexibility in opportunities to hunt doves, and would not significantly increase harvest and we propose to revise the Strategy as such. Additional information on the EMU issue was provided at the June 21, 2017, SRC meeting. We are reviewing that information.

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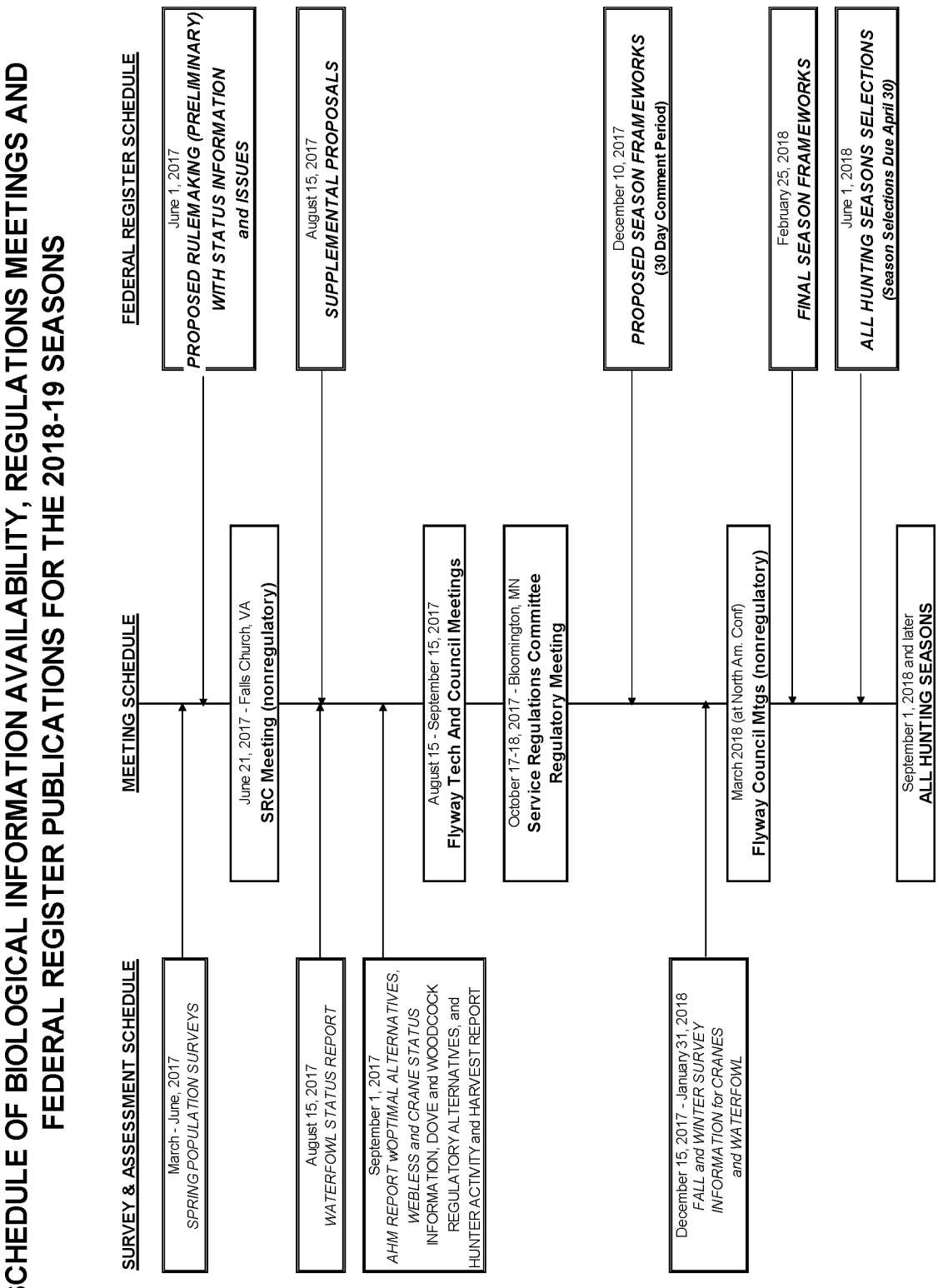
PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2018-19 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.



[FR Doc. 2017–16353 Filed 8–2–17; 8:45 am]
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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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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.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 3364/P.L. 115–44
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