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Contents

Federal Register

Vol. 77, No. 57

Friday, March 23, 2012

Agency for International Development
NOTICES
Meetings:
Board for International Food and Agricultural Development, 17001

Agricultural Marketing Service
PROPOSED RULES
Livestock Mandatory Reporting Program:
Establishment of the Reporting Regulation for Wholesale Pork, 16951–16967

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service
NOTICES
Meetings:
Match Making in the Biofuels Value Chain, 17001

Air Force Department
NOTICES
Privacy Act; Systems of Records, 17035–17036

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993:
Cellco Partnership, Comcast Cable Communications, LLC, Time Warner Cable LLC, and Bright House Networks, LLC, 17095
Global Climate and Energy Project, 17095

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Army Command & General Staff College Subcommittee, 17036

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17065–17066

Centers for Medicare & Medicaid Services
RULES
Medicaid Program:
Eligibility Changes under Affordable Care Act, 17144–17217
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17068
Approvals as Deeming Authorities for Rural Health Clinics:
American Assoc. for Accreditation of Ambulatory Surgery Facilities, 17068–17070
Medicare and Medicaid Programs:
Approval of Community Health Accreditation Program for Home Health Agency Accreditation Program, 17072–17073
Det Norske Veritas Healthcare; Application for Continued Approval of Hospital Accreditation Program, 17070–17072
Meetings:
Advisory Panel on Outreach and Education, Medicare, Medicaid, and Children's Health Insurance Programs, 17073–17074

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17074–17075

Coast Guard
RULES
Drawbridge Operations:
Miami River, Miami, FL, 16928–16929
Willamette River, Portland, OR, 16927–16928
Safety Zones:
Fireworks Displays within the Fifth Coast Guard District, 16929–16937
Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters, 17254–17320
PROPOSED RULES
Special Local Regulations:
Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY, 16978–16981
Ocean State Tall Ships Festival 2012, Narragansett Bay, RI, 16974–16978
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17081–17082
Environmental Impact Statements; Availability, etc.:
Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters, 17082–17084
Meetings:
National Boating Safety Advisory Council, 17084–17085

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions, 17034–17035
Procurement List; Proposed Additions and Deletions, 17035

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
See Navy Department

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Applications for New Awards:
Strengthening Institutions Program, 17044–17050
Training for Realtime Writers Program, 17039–17044
List of Correspondence from October 1 through December 31, 2011, 17050–17051

Employment and Training Administration
NOTICES
Funding Availabilities:
Serving Ex-Offenders through Strategies Targeted to Characteristics Common to Female Ex-Offenders, 17098

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Bogue Banks Coastal Storm Damage Reduction Feasibility Study, Carteret County, NC, 17036–17037
Mississippi River Hydrodynamic and Delta Management Study, Louisiana Coastal Area, LA, 17037–17038

Environmental Protection Agency
RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Illinois; Volatile Organic Compound Emission Control Measures for Chicago and Metro-East St. Louis Ozone Nonattainment Areas, 16940–16942
West Virginia; Regional Haze State Implementation Plan, 16937–16940
PROPOSED RULES
Air Quality:
Revision to Definition of Volatile Organic Compounds; Exclusion of a Group of Four Hydrofluoropolyethers, 16981–16987
National Emission Standards for Hazardous Air Pollutants:
Secondary Aluminum Production, 16987–16988
Protection of Stratospheric Ozone:
Amendment to HFO–1234yf SNAP Rule for Motor Vehicle Air Conditioning Sector, 16988–16990
Submission to Secretary of Agriculture of Two Draft Regulatory Documents under FIFRA, 16990–16991
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 17051–17052
Memorandum of Understanding Regarding Genetically Engineered Plants; Clarification and Correction:
Environmental Protection Agency, Department of Health and Human Services and Department of Agriculture, 17052
Requests to Voluntarily Amend Registration to Terminate Certain Uses:
Metaldehyde, 17052–17055

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 16914–16916
Bombardier, Inc. Airplanes, 16919–16921
Pratt & Whitney (PW) Turbofan Engines, 16916–16917
Pratt & Whitney Division Turbofan Engines, 16921–16923
Rolls-Royce Deutschland Ltd and Co KG Turbofan Engines, 16917–16919
Special Conditions:
Boeing Model 787 Series Airplanes; Single-place Side-facing Seats with Inflatable Lapbelts, 16910–16914
Embraer S.A., Model EMB 505; Inflatable Side-Facing Seat Three-Point Restraint Safety Belt, etc., 16907–16910
PROPOSED RULES
Airworthiness Directives:
Burkhart GROB Luft- und Raumfahrt GmbH Powered Sailplanes, 16968–16970
Pratt and Whitney Division Turbofan Engines, 16967–16968
NOTICES
Meetings:
Government/Industry Aeronautical Charting Forum; Correction, 17104–17105

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 17055

Federal Deposit Insurance Corporation
NOTICES
Intra-Agency Appeal Process; Guidelines:
Material Supervisory Determinations and Appeals of Deposit Insurance Assessment Determinations, 17055–17060

Federal Motor Carrier Safety Administration
NOTICES
Applications for Exemptions from Commercial Driver's License Standards:
Rotel North American Tours, LLC; Correction, 17105
Identification of Interstate Motor Vehicles; Petitions for Determinations:
Chicago, IL Registration Emblem Requirement, 17105–17107
Qualifications of Drivers; Exemption Applications:
Diabetes Mellitus, 17116–17117
Vision, 17108–17109

Food and Drug Administration
RULES
Agreements and Memoranda of Understanding with Other Departments, Agencies, and Organizations, 16923–16925
Medical Devices; Neurological Devices:
Classification of the Near Infrared Brain Hematoma Detector, 16925–16927
PROPOSED RULES
Agreements and Memoranda of Understanding with Other Departments, Agencies, and Organizations, 16971–16973
Direct-to-Consumer Prescription Drug Advertisements:
Presentation of Major Statement in Television and Radio Advertisements, etc., 16973–16974
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Adverse Event Reporting and Recordkeeping for Dietary Supplements, etc., 17076–17077
Meetings:
Gastrointestinal Drugs Advisory Committee, 17078

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplemental Nutrition Assistance Program, 17004
WIC Infant and Toddler Feeding Practices Study–2, 17002–17004

Child Nutrition Programs:
Income Eligibility Guidelines, 17004–17006
Special Supplemental Nutrition Program for Women, Infants and Children:
Income Eligibility Guidelines, 17006–17007

Foreign-Trade Zones Board
NOTICES
Applications for Manufacturing Authority:
Morgan Fabrics Corp., Foreign-Trade Zone 158, Vicksburg/Jackson, MS, 17012
Applications for Reorganization Under the Alternative Site Framework:
Foreign-Trade Zone 64, Jacksonville, FL, 17012–17013

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Pilgrim Timber Sale Project:, Kootenai National Forest, Cabinet Ranger District, MT, 17007–17009

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
RULES
Patient Protection and Affordable Care Act:
Standards Related to Reinsurance, Risk Corridors and Risk Adjustment, 17220–17252
NOTICES
Requirements and Registration for Beat Down Blood Pressure Challenge, 17060–17062

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17078–17079

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Federal Properties Suitable as Facilities to Assist Homeless, 17126–17142
Section 8 Housing Choice Vouchers:
Revised Implementation of the HUD–VA Supportive Housing Program, 17086–17090

Interior Department
See Land Management Bureau
NOTICES
Trust Land Consolidation Draft Plan, 17091

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17123–17124

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Sodium Hexametaphosphate from the People's Republic of China, 17013–17017
Final Affirmative Countervailing Duty Determinations, Final Affirmative Critical Circumstances Determinations:
Certain Steel Wheels from the People's Republic of China, 17017–17021
Final Determinations of Sales at Less Than Fair Value:
Certain Steel Nails from the United Arab Emirates, 17029–17032
Certain Steel Wheels from the People's Republic of China, 17021–17026
Certain Stilbenic Optical Brightening Agents from Taiwan, 17027–17029

International Trade Commission
NOTICES
Complaints:
Certain Food Waste Disposers and Components and Packaging Thereof, 17093–17094
Investigations; Terminations, Modifications and Rulings:
Certain Portable Communication Devices, 17094

Justice Department
See Antitrust Division
See National Institute of Corrections

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
The 13 Carcinogens Standard, 17097–17098

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
California Desert Conservation Area Plan Amendment for the Calnev Pipe Line Expansion Project, 17091–17092
Filing of Plats of Survey:
Nebraska, 17092
New Mexico, 17092–17093
Meetings:
Idaho Falls District Resource Advisory Council, 17093

Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Diesel-Powered Equipment for Underground Coal Mines, 17099–17100
Independent Contractor Registration and Identification, 17098–17099

National Archives and Records Administration
NOTICES
Records Schedules; Availability, 17101–17102

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
National Endowment for the Humanities; Cancellation, 17102

National Institute of Corrections
NOTICES
Cooperative Agreement Solicitations:
Development of a Core Correctional Practices Curriculum, 17095–17097

National Institutes of Health
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health & Human Development, 17080
National Institute of Biomedical Imaging and Bioengineering, 17080
National Institute of Nursing Research, 17079–17080

National Oceanic and Atmospheric Administration
RULES
Central Regulatory Area of the Gulf of Alaska:
Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-line Gear, 16949
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock in Statistical Area 630 in the Gulf of Alaska, 16950
Fisheries of the Northeastern U.S.:
Northeast Multispecies Fishery; Amendment 17, 16942–16949
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper–Grouper Fishery off the Southern Atlantic States; Amendment 18A, 16991–17000
NOTICES
Meetings:
Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas, 17032–17033
Taking and Importing Marine Mammals:
Gulf of Mexico Range Complex; Letter of Authorization, 17033–17034

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Mathematical and Physical Sciences; Correction, 17102

Navy Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Military Readiness Activities in the Northwest Training and Testing Study Area; Correction, 17038–17039

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 17102

Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects
NOTICES
Review of Federal Permit Conditions, 17009–17012

Pipeline and Hazardous Materials Safety Administration
NOTICES
Supplementary Advisory Bulletins:
Pipeline Safety – Cast Iron Pipe, 17119–17121

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
International Securities Exchange, LLC, 17102–17104

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition:
Ecstatic Alphabets/Heaps of Language, 17104

Surface Transportation Board
NOTICES
Control Exemptions:
RailAmerica, Inc., et al. for Wellsboro & Corning Railroad, LLC, 17121
Quarterly Rail Cost Adjustment Factor, 17121–17122
Temporary Trackage Rights Exemptions:
Indiana Southern Railroad, LLC from Norfolk Southern Railway Co., 17122

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17122–17123

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Waiver of Foreign Residence Requirement of Section 212(e) of Immigration and Nationality Act, 17085–17086

U.S. Customs and Border Protection
NOTICES
2012 West Coast Trade Symposium, Transforming Trade for a Stronger Economy; Correction, 17086

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 17126–17142

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 17144–17217

Part IV
Health and Human Services Department, 17220–17252

Part V
Homeland Security Department, Coast Guard, 17254–17320

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

59 16951

14 CFR

23 16907
25 16910
39 (5 documents) 16914, 16916, 16917, 16919, 16921

Proposed Rules:

39 (2 documents) 16967, 16968

21 CFR

20 16923
882 16925

Proposed Rules:

20 16971
202 16973

33 CFR

117 (2 documents) 16927, 16928
151 17254
165 16929

Proposed Rules:

100 (2 documents) 16974, 16978

40 CFR

52 (2 documents) 16937, 16940

Proposed Rules:

51 16981
63 16987
82 16988
158 16990
171 16990

42 CFR

431 17144
435 17144
457 17144

45 CFR

153 17220

46 CFR

162 17254

50 CFR

648 16942
679 (2 documents) 16949, 16950

Proposed Rules:

622 16991

Rules and Regulations

Federal Register
Vol. 77, No. 57
Friday, March 23, 2012

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2012–0315; Special Conditions No. 23–257–SC]

Special Conditions: Embraer S.A., Model EMB 505; Inflatable Side-Facing Seat Three-Point Restraint Safety Belt With an Integrated Airbag Device in the Side-Facing Divan Aft Position

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the installation of an inflatable three-point restraint safety belt with an integrated airbag device at the aft position in two-place side-facing divan seats on the Embraer S.A. aircraft model EMB–505. These airplanes, as modified by the installation of these inflatable safety belts, will have novel and unusual design features associated with the upper-torso restraint portions of the three-point safety belts, which contain an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 16, 2012.

Comments must be received on or before April 23, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0315 using any of the following methods:

Federal eRegulations Portal: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, email *Robert.Stegeman@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0315.'' The postcard will be date stamped and returned to the commenter.

Background

On December 13, 2010, Embraer S.A. applied for a Design Change Application, for the installation of a two-place side-facing divan on aircraft model EMB–505. Embraer S.A. applied for, and was granted, Exemption No. 10321 to § 23.562 for the two-place divan due to its unique installation and safety requirements for the occupants. The exemption included additional testing requirements. Embraer opted to use a three-point safety belt restraint system for the aft occupant seat to meet the exemption safety requirements.

The inflatable restraint systems are three-point safety belt restraint systems consisting of a lap belt and shoulder harness with an inflatable airbag attached to the shoulder harness belt. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment.

If an emergency landing occurs, the airbag will inflate, limit forward translation and prevent contact with the forward occupant or other interior structure due to flailing. This will reduce the potential for head and torso injury and protect the forward occupant as well. The inflatable restraint behaves in a manner similar to an automotive airbag; however, in this case, the airbag is integrated into the shoulder belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety as the conventional

certification basis airplane occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. This concern is of lesser consequence in this application because it is not installed in a cockpit position. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. Embraer S.A. must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. The effect of this cumulative damage means a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the occupant restraints currently installed, the inflatable restraint system must show that it will offer an equivalent level of protection for an emergency landing. If an inadvertent deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under an emergency landing condition. The side-facing seats of EMB–505 model airplanes are certificated to the structural requirements of § 23.562 and Exemption 10321; therefore, the test emergency landing pulses identified must be used to satisfy this requirement.

A wide range of occupants may use the inflatable restraint; therefore, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. Embraer S.A. may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. Embraer S.A., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Embraer S.A. model airplane identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if the airbag deploys. When deployment occurs, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire to avoid creating an additional hazard by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the EMB–505 model airplane continues to meet the applicable provisions of the applicable regulations in effect on the date of application for the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The following model is covered by this special condition:

Embraer S.A. Model EMB–505

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations

(i.e., part 23 as amended) do not contain adequate or appropriate safety standards for the AmSafe, Inc., inflatable restraint as installed on this Embraer S.A. model because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The Embraer S.A. EMB–505 model airplane will incorporate the following novel or unusual design feature:

A three-point safety belt restraint system incorporating an inflatable airbag at the aft position in the two-place side-facing divan.

The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the shoulder harness, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure and forward adjacent occupant, which will provide some protection to the head of the occupant and significantly limit forward flailing of the upper torso and head. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Embraer S.A. EMB–505 model airplane equipped with three-point inflatable restraints. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Embraer S.A. EMB–505 model airplane equipped with the three-point inflatable restraint systems.

Conclusion

This action affects only certain novel or unusual design features on the previously identified Embraer S.A. airplane model. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the delivery of the airplane(s), the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the Embraer S.A. EMB–505 model airplane occupant restraint systems. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for this model.

Embraer S.A., Model EMB 505; Inflatable Side-Facing Seat Three-Point Restraint Safety Belt with an Integrated Airbag Device in the Side-Facing Divan Aft Position of the Embraer S.A. EMB–505 model airplanes.

In addition to the provisions of 14 CFR 23.562 and 23.785, the minimum acceptable standards for certification of multiple place side-facing divans equipped with an airbag system in the shoulder harnesses are as follows:

1. It must be shown that the inflatable restraint will deploy and provide protection under the dynamic test conditions specified in Title 14 CFR 23.562. It is not necessary to account for floor warpage, as required by § 23.562(b)(3) or vertical dynamic loads, as required by § 23.562(b)(1). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue

personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lighting and HIRF, are incorporated by reference for the purpose of measuring lightning and HIRF protection. Also, for purposes of complying with these requirements, the airbag system is considered a critical system at pilot/co-pilot positions only.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri, on March 16, 2012.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6956 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0311; Special Conditions No. 25–458–SC]

Special Conditions: Boeing Model 787 Series Airplanes; Single-place Side-facing Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 787 series airplanes. These airplanes have a novel or unusual design feature associated with single-place side-facing seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 12, 2012. We must receive your comments by April 23, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0311 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2136; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 28, 2003, Boeing Commercial Airplanes applied for an FAA type certificate for its new Model 787 series airplane (hereafter referred to as ''787''). The 787 is an all-new, twin-engine jet transport airplane with a two-aisle cabin which is currently approved under Type Certificate No. T000215E. The maximum takeoff weight is 476,000 pounds, with a maximum passenger count of 381. These airplanes have a novel or unusual design feature associated with single-place side-facing seats with inflatable lapbelts. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14, Code of Federal Regulations (14 CFR) 121.311(j) requires that no person may operate a transport category airplane type certificated after January 1, 1958, and manufactured on or after October 27, 2009, in passenger-carrying operations, after October 27, 2009, unless all passenger and flight attendant side-facing seats on an airplane operated under part 121 rules meet the

requirements of 14 CFR 25.562 in effect on or after June 16, 1988.

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20 to part 25, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat that makes more than an 18 degree angle with the vertical plane containing the airplane centerline, must be protected from head injury by a safety belt and an energy absorbing rest that will support the arms, shoulders, head, and spine, or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. The FAA concluded that an 18-degree angle would provide an adequate level of safety based on tests that were performed at that time and thus adopted that standard.

Part 25 was amended June 16, 1988, by Amendment 25–64, to revise the emergency landing conditions that must be considered in the design of the airplane. Amendment 25–64 revised the static load conditions in § 25.561, and added a new § 25.562 that required dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 25–64 is to provide an improved level of safety for occupants on transport category airplanes. Because most seating is forward-facing on transport category airplanes, the pass/fail criteria developed in Amendment 25–64 focused primarily on these seats. As a result, the FAA issued Policy Memorandums ANM–03–115–30 and PS–ANM–100–2000–00123 to provide the additional guidance necessary to demonstrate the level of safety required by the regulations for side-facing seats.

The 787, operated under part 121, must meet all of the requirements of § 25.562 for passenger and flight attendant seats. Therefore it is in the interest of installers to show full compliance to § 25.562, so that an operator under part 121 may be able to use the aircraft without having to do additional certification work. It is also noted that some foreign civil airworthiness authorities have invoked these same operator requirements in the form of airworthiness directives.

Section 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that each seat type design approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be shown to be compliant by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided or the seat be designed so that the head impact does not exceed a HIC of 1000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address side-facing seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats. These criteria were to be implemented via special conditions.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the CFR. Conversely, inflatable lapbelts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in order to develop standards for this design feature.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lapbelt will rely on electronic sensors for signaling and a stored gas canister for inflation. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of inadvertent deployment as well as failure to deploy must be considered in establishing the reliability of the system. Boeing must substantiate that the effects of an inadvertent deployment in flight either would not cause injuries to occupants or that such deployment(s) meet the requirement of § 25.1309(b). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lapbelt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and existing HIRF special condition for the 787 series airplanes, Special conditions No. 25–354A–SC, are applicable. Finally, the inflatable lapbelt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable lapbelt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the inflatable lapbelt differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable lapbelt is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the inflatable lapbelt. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could

render the inflatable lapbelt useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lapbelt installation should provide protection when it is required, by not expending its protection during a less severe impact. Also, it is possible to have several large impact events during the course of a crash, but there is no requirement for the inflatable lapbelt to provide protection for multiple impacts.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

The inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case when deploying into the seated, braced occupant.

Another area of concern is the use of seats, so equipped, by children whether lap-held, in approved child safety seats, or occupying the seat directly. Although specifically prohibited by the FAA operating regulations, the use of the supplementary loop belt (''belly belt'') may be required by other civil aviation authorities, and should also be considered with the end goal of meeting those regulations. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure to deploy due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable (§ 25.809). In actuality, it is unlikely that an exit would be prepared by a flight attendant this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt is expected to deflate much quicker than ten seconds.

In addition, during the development of the inflatable lapbelt, the manufacturer was unable to develop a fabric that would meet the inflation requirements for the bag and the flammability requirements of Part I(a)(1)(ii) of appendix F to part 25. The fabrics that were developed that meet the flammability requirement did not produce acceptable deployment characteristics. However, the manufacturer was able to develop a fabric that meets the less stringent flammability requirements of Part I(a)(1)(iv) of appendix F to part 25 and has acceptable deployment characteristics.

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on both material types, as well as use, and have been specified in light of the state-of-the-art of materials available to perform a given function. In the absence of a specific reference, the default requirement would be for the type of material used to construct the inflatable restraint, which is a fabric in this case. However, in writing special conditions, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Since the safety benefit of the inflatable restraint is very significant, the flammability standard appropriate for these devices should not screen out suitable materials, thereby effectively eliminating use of inflatable restraints. The FAA will need to establish a balance between the safety benefit of the inflatable restraint and its flammability performance. At this time, the 2.5-inch per minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

Finally, it should be noted that the special conditions are applicable to single-place side-facing seats with an inflatable lapbelt system installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Boeing Commercial Airplanes must show that the 787 series airplanes meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–120, 25.125, 25–125, and 25–128 with the following exception: § 25.1309 remains at Amendment 25–119 for cargo fire protection systems.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the 787 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory

adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The 787 series airplanes incorporate the following novel or unusual design features: Boeing Commercial Airplanes is installing single-place side-facing seats with inflatable lapbelts on certain seats of 787 series airplanes, in order to reduce the potential for head and neck injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lapbelt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning single-place side-facing seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of single-place side-facing seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the 787 series airplanes equipped with single-place side-facing seats with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the inflatable lapbelt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lapbelts is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the 787 series airplane. Should Boeing Commercial Airplanes apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on 787 series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 787 series airplanes.

1. *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side facing seat. Head Injury Criterion (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

2. *Body-to-Wall/Furnishing Contact:* Under the load condition defined in § 25.562(b)(2), the seat must be installed aft of a structure such as an interior wall or furnishing that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests.

3. *Thoracic Trauma:* Under the load condition defined in § 25.562(b)(2), Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis based on previous test(s) of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by Title 49 Code of Federal Regulations (CFR) part 572, subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR part 572, subpart F. The SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) § 571.214, section S6.13.5.

4. *Pelvis:* Under the load condition defined in § 25.562(b)(2), pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS § 571.214, section S6.13.5.

5. *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

6. *Neck Injury Criteria:* The seating system must protect the occupant from experiencing serious neck injury.

General Test Guidelines

1. One longitudinal test with the SID Anthropomorphic Test Dummy (ATD), undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

2. *Pass/fail injury assessments:* TTI and pelvic acceleration. One longitudinal test with the Hybrid II ATD, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrests/walls). Pass/fail injury assessments: HIC, and upper torso restraint load, restraint system retention and pelvic acceleration.

3. Vertical (14 G's) test is to be conducted with modified Hybrid II ATDs with existing pass/fail criteria.

Note: It must be demonstrated that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS–ANM–100–2000–00123, dated February 2, 2000, titled ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets'' will be acceptable to the FAA.

Inflatable Lapbelt Conditions

If inflatable lapbelts are installed on single-place side-facing seats, the inflatable lapbelt(s) must meet the final inflatable lapbelt special conditions (Special Conditions No. 25–431–SC (76 FR 35324, June 17, 2011).

Issued in Renton, Washington, on March 12, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 2012–6957 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0272; Directorate Identifier 2011–NM–042–AD; Amendment 39–16989; AD 2012–06–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A340–211, –212, –311, and –312 airplanes. This AD requires repetitive inspections for cracking at the fastener hole area just above stringer 28, of both left- and right-hand fuselage frame 39.1, and repair if necessary. This AD was prompted by a determination that certain airplanes were not included in a certain airworthiness limitation item (ALI) task (inspections for cracking of the fuselage frame 39.1) and that the inspections must be done to address the identified unsafe condition. We are issuing this AD to detect and correct cracking in the fuselage that could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective April 9, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 9, 2012.

We must receive comments on this AD by May 7, 2012.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0245, dated November 26, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Airworthiness Limitation Item (ALI) task 533105–01–01 is applicable to aeroplanes on which Airbus modification 40391 has not been embodied in production. The requirements associated to this task are applicable to aeroplanes on which Modification Proposal (MP–S10437) has not been embodied.

Following a query from an operator, investigations revealed that some MSN [manufacturer serial number], for which Airbus modification 40391 was indicated as fully embodied inside the Aircraft Inspection Report (AIR), did not have Modification Proposal (MP–S10437) which is part of this modification embodied in production.

As a result, ALI task 533105–01–01 has not been taken into account for some MSN listed in the applicability section of this AD, which constitutes an unsafe condition.

For the reasons described above, this [EASA] AD requires repetitive special detailed inspections [for cracking] corresponding to ALI task 533105–01–01 and the accomplishment of the associated corrective actions [repair], for all aeroplanes to which this task is applicable. Airworthiness Limitation Item (ALI) task 533105–01–01 will be deleted in the next ALS [Airworthiness Limitations Section] Part 2 revision.

The unsafe condition is cracking in the fuselage that could result in reduced structural integrity of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–53–4184, including Appendices 01 and 02, dated October 5, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0272; Directorate Identifier 2011–NM–042–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–06–08 Airbus: Amendment 39–16989. Docket No. FAA–2012–0272; Directorate Identifier 2011–NM–042–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A340–211, –212, –311, and –312 airplanes; certificated in any category; having manufacturer serial numbers (MSN) 0002, 0003, 0005 through 0009 inclusive, 0011, 0013, 0014, 0015, 0018 through 0023 inclusive, 0025, 0026, and 0027.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that certain airplanes were not included in a certain airworthiness limitation item (ALI) task (inspections for cracking of the fuselage frame 39.1) and that the inspections must be done to address the identified unsafe condition. We are issuing this AD to detect and correct cracking in the fuselage that could result in reduced structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

At the later of the times specified in paragraphs (g)(1) or (g)(2) of this AD: Do an ultrasonic inspection for cracking at the fastener hole area just above stringer 28, of both left- and right-hand fuselage frame 39.1, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–53–4184, excluding Appendices 01 and 02, dated October 5, 2010. Repeat the inspection thereafter at intervals not to exceed 7,850 flight cycles or 53,300 flight hours, whichever occurs first.

(1) Before the accumulation of 13,600 total flight cycles or 92,100 total flight hours since the first flight of the airplane, whichever occurs first; or

(2) Within 6 months after the effective date of this AD.

(h) Repair

If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair the crack using a method approved by Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Credit for Previous Actions

This paragraph provides credit for the initial inspection only, as required by paragraph (g) of this AD, if the inspection was done before the effective date of this AD using Task 533105–01–01, ''Special Detailed Inspection of Fuselage Internal Structure, Fastener Hole Area Above Stringer 28 at FR 39.1 Web Junction on Hoist Fitting, LH/RH,'' of Section 2.1, ''A340–200/300 Airworthiness Limitations,'' of the Airworthiness Limitations Section (ALS), Part 2 ''Damage-Tolerant Airworthiness Limitation Items,'' of the Airbus A340 Airworthiness Limitation Items (ALI) document 95A.0051/97, Issue 11, dated February, 2009.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to Attn: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0245, dated November 26, 2010; and Airbus Mandatory Service Bulletin A340–53–4184, excluding Appendices 01 and 02, dated October 5, 2010; for related information.

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Airbus Mandatory Service Bulletin A340–53–4184, dated October 5, 2010.

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

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6778 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1176; Directorate Identifier 2011–NE–35–AD; Amendment 39–16995; AD 2012–06–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW)Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for PW JT9D–7R4G2 and –7R4H1 turbofan engines. This AD was prompted by the determination that a new lower life limit for high-pressure turbine (HPT) 1st stage air seals, part number (P/N) 735907, is necessary. This AD establishes a new lower life limit for HPT 1st stage air seals, P/N 735907, and requires removing them from service using a drawdown schedule. We are issuing this AD to prevent critical life-limited rotating engine part failure and damage to the airplane.

DATES: This AD is effective April 27, 2012.

ADDRESSES: You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; email: *ian.dargin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 23, 2011 (76 FR 72348). That NPRM proposed to require establishing a new lower life limit for HPT 1st stage air seals, P/N 735907, from 15,000 cycles-since-new (CSN) to 9,000 CSN and to require removing them from service using a drawdown schedule.

Comments

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

Support for the NPRM as Written

The Boeing Company and an individual commenter support the NPRM (76 FR 72348, November 23, 2011) as written.

Request To Revise Applicability

Commenter PW requested that we revise the applicability and summary sections of the AD to limit applicability to only the PW JT9D–7R4G2 and –7R4H1 turbofan engine models. We agree. In addition to the JT9D–7R4G2 and –7R4H1 engines, the NPRM (76 FR 72348, November 23, 2011) incorrectly included JT9D–7R4D, –7R4D1, –7R4E, –7R4E1 and –7R4E4 engine models. We changed the AD by limiting the applicability to only the PW JT9D–7R4G2 and –7R4H1 turbofan engine models.

Request To Revise Removal Limits

Commenter Federal Express requested that different removal (drawdown) limits be specified for the JT9D–7R4E1 and –7R4E1H engine models, based on the life limits listed in chapter 05 of the PW engine manual.

We do not agree. We removed the JT9D–7R4E1 and –7R4E1H engine models from this AD in response to another comment. Therefore, the JT9D–7R4E1 and –7R4E1H engine models are no longer affected by this AD. However, as these air seals are installed on other engine models, we modified the installation prohibition paragraph to indicate that an air seal removed in accordance with this AD cannot be installed in any other engine. Further, we noted that all air seals identified in this AD, when used on the JT9D–7R4E1 and –7R4E1H engine models, have a 9,000 CSN life limit.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 28 Pratt & Whitney JT9D–7R4G2, and –7R4H1 turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take 28.8 work-hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour.

Required parts will cost about $37,200 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,110,144.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–06–14 Pratt & Whitney: Amendment 39–16995; Docket No. FAA–2011–1176; Directorate Identifier 2011–NE–35–AD.

(a) Effective Date

This AD is effective April 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney JT9D–7R4G2 and –7R4H1 turbofan engines.

(d) Unsafe Condition

This AD was prompted by the determination that a new lower life limit of 9,000 cycles-since-new (CSN) for high-pressure turbine (HPT) 1st stage air seals, part number (P/N) 735907, is necessary. We are issuing this AD to prevent critical life-limited rotating engine part failure, and damage to the airplane.

(e) Compliance

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

(f) Removal of HPT 1st Stage Air Seals, P/N 735907

Remove HPT 1st stage air seals, P/N 735907, from service as follows:

(1) For air seals that have fewer than 6,500 CSN on the effective date of this AD, remove the air seals from service before exceeding 9,000 CSN.

(2) For air seals that have 6,500 CSN or more on the effective date of this AD, do the following:

(i) If the engine has a shop visit before the air seal exceeds 9,000 CSN, remove the air seal from service before exceeding 9,000 CSN.

(ii) If the engine does not have a shop visit before the air seal exceeds 9,000 CSN, remove the air seal from service at the next shop visit, not to exceed 2,500 cycles from the effective date of this AD or 15,000 CSN, whichever occurs first.

(g) Installation Prohibition

(1) After the effective date of this AD, do not install or reinstall into any engine any HPT 1st stage air seal, P/N 735907, removed from service in accordance with paragraph (f) of this AD.

(2) After the effective date of this AD, do not install or reinstall into any JT9D–7R4G2 or JT9D–7R4H1 engine any HPT 1st stage air seal, P/N 735907, that exceeds the new life limit of 9,000 CSN.

(h) Engine Shop Visit Definition

For the purposes of this AD, an engine shop visit is the induction of an engine into the shop after the effective date of this AD, where the separation of a major engine flange occurs, except that the following maintenance actions, or any combination thereof, are not considered engine shop visits:

(1) Introduction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(2) Introduction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(3) Introduction of an engine into a shop solely for replacement of the turbine rear frame.

(4) Introduction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(5) Introduction of an engine into a shop solely for replacement of the fan containment case.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

For more information about this AD, contact Ian Dargin, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; email: *ian.dargin@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 16, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–6952 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0288; Directorate Identifier 2012–NE–10–AD; Amendment 39–16998; AD 2012–06–17]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain

Rolls-Royce Deutschland (RRD) Models Tay 611–8 and Tay 611–8C turbofan engines. This AD requires replacement of the high-pressure (HP) turbine spanner retaining nut. This AD was prompted by the discovery that certain HP turbine spanner retaining nuts were improperly heat treated after application of silver plating. We are issuing this AD to prevent failure of the HP turbine stage 2 disc, uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective March 23, 2012.

We must receive comments on this AD by May 7, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *mark.riley@faa.gov;* phone: 781–238–7758; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2012–0039–E, dated March 9, 2012, and EASA AD 2012–0039R1, dated March 14, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A recent quality investigation by Rolls-Royce Deutschland has identified that certain stage 2 high-pressure turbine (HPT) disc spanner retaining nuts did not receive the proper heat treatment after application of silver plating. This condition, if not corrected, could result in a stage 2 HPT disc failure, possibly leading to release of high energy debris, resulting in damage to the aeroplane and/or injury to occupants.

We are issuing this AD to prevent failure of the HP turbine stage 2 disc, uncontained engine failure, and damage to the airplane.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

RRD has issued Alert Service Bulletin No. TAY–72–A1769, dated March 9, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with EASA, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires replacement of the HP turbine spanner retaining nut on certain serial number engines, within 20 flight cycles after the effective date of the AD or within 200 flight cycles since the last engine shop visit, whichever occurs first.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time required to remove the unsafe condition. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0288; Directorate Identifier 2012–NE–10–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–06–17 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce plc, Derby, England): Amendment 39–16998; Docket No. FAA–2012–0288; Directorate Identifier 2012–NE–10–AD.

(a) Effective Date

This AD becomes effective March 23, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Rolls-Royce Deutschland Ltd & Co KG (RRD) turbofan engines:

(1) TAY 611–8 engines, serial numbers (S/Ns) 16870, 16879, 16880, 16897, 18046, 18051, 18052, 18053, 18058, 18065, 18066, 18169, and 18194.

(2) TAY 611–8C engine S/N 85313.

(d) Reason

This AD was prompted by the discovery that certain high-pressure (HP) turbine spanner retaining nuts were improperly heat treated after application of silver plating. We are issuing this AD to prevent failure of the HP turbine stage 2 disc, uncontained engine failure, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) Within 20 flight cycles after the effective date of the AD or within 200 flight cycles since the last engine shop visit, whichever occurs first, remove the HP turbine spanner retaining nut from the combustion and HP turbine module, and install a new HP turbine spanner retaining nut.

(2) Do not reinstall HP turbine spanner retaining nuts removed as specified in paragraph (e)(1) of this AD, into any engine.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *mark.riley@faa.gov;* phone: 781–238–7758; fax: 781–238–7199.

(2) Refer to MCAI European Aviation Safety Agency Emergency AD 2012–0039–E, dated March 9, 2012; AD 2012–0039R1, dated March 14, 2012; and RRD Alert Service Bulletin No. TAY–72–A1769, dated March 9, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 19, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–6995 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1090; Directorate Identifier 2011–NM–138–AD; Amendment 39–16986; AD 2012–06–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by a report of the inability to open the airstair door while on the ground, because the airstair door seal did not deflate, which prevented the airstair door from opening. This AD requires changing the wiring that controls the pneumatic shut-off valve. We are issuing this AD to prevent the airstair door seal from not deflating, which could result in the airstair door not opening and could impede evacuation in the event of an emergency.

DATES: This AD becomes effective April 27, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 27, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 19, 2011 (76 FR 64847). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One case of the inability to open the airstair door while on ground was reported in service. The airstair door seal did not deflate, preventing the airstair door from opening. It was found that the existing airstair door pneumatic shut-off valve control logic prevents the airstair door seal from deflating due to a single Input/Output Module failure under certain conditions. The inability to open the airstair door could impede evacuation in the event of an emergency.

This [Canadian] directive mandates the wiring changes [ModSum 4–126513, Seal System Shut Off Valve Control Logic Change] to prevent the above-mentioned failure conditions.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received.

Support for the Intent of the NPRM (76 FR 64847, October 19, 2011)

Air Line Pilots Association, International (ALPA), supports the intent of the NPRM (76 FR 64847, October 19, 2011).

Recommendation To Reduce Compliance Time

ALPA recommends that the compliance time proposed in the NPRM (76 FR 64847, October 19, 2011) be reduced to not exceed 3,000 flight hours or 12 months, whichever occurs first, instead of within 6,000 flight hours as specified in the NPRM.

We disagree with the commenter's recommendation to reduce the compliance time. We have determined that within 6,000 flight hours represents an appropriate interval of time in which the required actions can be performed. Transport Canada Civil Aviation (TCCA), in issuing their Canadian Airworthiness Directive CF–2011–15, dated June 20, 2011, has assessed the risk involved with that action, and through that assessment derived the compliance time, with which the manufacturer, Bombardier, Inc., has concurred. The AD does allow operators to comply earlier than the 6,000 flight hours. However, if additional data are presented that would justify a shorter compliance time, we might consider further rulemaking. We have not changed the AD in this regard.

Explanation of Change Made to This AD

We have revised the wording of paragraph (h) of this AD; this change does not change the intent of that paragraph.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 64847, October 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 64847, October 19, 2011).

Costs of Compliance

We estimate that this AD will affect about 81 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $82,620, or $1,020 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 64847, October 19, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–06–05 Bombardier, Inc.: Amendment 39–16986. Docket No. FAA–2011–1090; Directorate Identifier 2011–NM–138–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4361 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a report of the inability to open the airstair door while on the ground, because the airstair door seal did not deflate, which prevented the airstair door from opening. We are issuing this AD to prevent the airstair door seal from not deflating, which could result in the airstair door not opening and could impede evacuation in the event of an emergency.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 6,000 flight hours after the effective date of this AD: Incorporate ModSum 4–126513, Seal System Shut Off Valve Control Logic Change, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–52–69, Revision C, dated June 28, 2011.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if the actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–52–69, dated January 28, 2011; Revision A, dated April 26, 2011; or Revision B, dated May 9, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–15, dated June 20, 2011; and Bombardier Service Bulletin 84–52–69, Revision C, dated June 28, 2011; for related information.

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Service Bulletin 84–52–69, Revision C, dated June 28, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 9, 2012.

Ali Bahrami

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6530 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1194; Directorate Identifier 2011–NE–36–AD; Amendment 39–16999; AD 2012–06–18]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix. This AD was prompted by reports of five engine in-flight shutdowns and seven unplanned engine removals. This AD requires inspections, cleaning, and engine modifications to address coking in the No. 4 bearing compartment and in the oil pressure and scavenge tubes. We are issuing this AD to prevent an engine fire, a fractured fan drive shaft, and damage to the airplane.

DATES: This AD is effective April 27, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 23, 2011 (76 FR 72353). That NPRM proposed to require inspections, cleaning, and engine modifications to address coking in the No. 4 bearing compartment and oil pressure and scavenge tubes.

Comments

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

Request To Not Call Out Specific Instructions

Delta Airlines requested that we do not call out specific instructions to inspect, clean, and install the modifications, because operators have developed their own maintenance practices that are adequate, but may not align 100% with the Service Bulletin (SB) instructions.

We agree. We changed the AD to not incorporate by reference the SBs, and to list them only as related information, without calling out any specific revision numbers of them.

Request To Recognize Compliance by Accomplishing SBs Before the Effective Date of the AD

Federal Express, United Parcel Service, and United Airlines requested that we recognize that their compliance by accomplishing earlier versions of Pratt & Whitney SB No. PW4ENG 72–472 and SB No. PW4ENG 79–76 before the effective date of the AD is terminating action to the AD. The commenters stated that many engines have already had the modifications accomplished but to earlier versions of the SBs.

We agree. Because we no longer incorporate the SBs by reference, if the requirements of the AD have already been done either by the current revision or an earlier revision of SB No. PW4ENG 72–472, SB No. PW4ENG 79–76, and Alert SB No. A72–436, or other methods, techniques, or practices acceptable to the Administrator, then no further action is required. We have also changed the applicability to limit the AD to only those engines that have not already made the modifications.

Update to the List of Affected Engine Models

Since we issued the NPRM (76 FR 72353, November 23, 2011), we determined that we need to update the list of affected engine models, to reflect the models listed in the title block of the type certificate data sheet. Engine models PW4060C, PW4062, PW4062A, PW4650, and PW4160 have been added in this AD. The affected engine models in operation, as listed in the NPRM, have not changed in this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 44 turbofan engines installed on airplanes of U.S. registry. We estimate that it will take 8 work-hours per engine to perform an inspection and cleaning of the No. 4 bearing compartment; 7 work-hours per engine to perform the modification to stop buildup of coking in the No. 4 bearing compartment; and 33.7 work-hours per engine to perform the rerouting of the No. 4 bearing pressure and scavenge tubes. The average labor rate is $85 per work-hour. Required parts will cost about $69,322 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $3,232,306.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–06–18 Pratt & Whitney Division: Amendment 39–16999; Docket No. FAA–2011–1194; Directorate Identifier 2011–NE–36–AD.

(a) Effective Date

This AD is effective April 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix, that have not incorporated Pratt & Whitney Alert Service Bulletin (ASB) No. PW4ENG–A72–436; Service Bulletin (SB) No. PW4ENG–79–76; and SB No. PW4ENG–72–472.

(d) Unsafe Condition

This AD was prompted by reports of five engine in-flight shutdowns and seven unplanned engine removals due to clogging of No. 4 bearing compartment oil pressure and scavenge tubes. We are issuing this AD to prevent an engine fire, a fractured fan drive shaft, and damage to the airplane.

(e) Compliance

(1) If you have incorporated Pratt & Whitney ASB No. PW4ENG–A72–436; SB No. PW4ENG–79–76; and SB No. PW4ENG–72–472, then no further action is required.

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

(f) Inspection and Cleaning of No. 4 Bearing Compartment for Coking

(1) Within 1,000 cycles-in-service (CIS) after the effective date of this AD, inspect and clean the No. 4 bearing compartment.

(2) Thereafter, within every additional 1,000 CIS, re-inspect and clean the No. 4 bearing compartment.

(g) Modification To Stop Buildup of Coking in the No. 4 Bearing Compartment, and Rerouting of the No. 4 Bearing Pressure and Scavenge Tubes

At the next engine shop visit, but not to exceed 5 years after the effective date of this AD, do the following:

(1) Replace the No. 4 bearing packing transfer tube assembly;

(2) Replace the No. 4 bearing internal scavenge tube assembly;

(3) Remove the No. 4 bearing shield, and the No. 4 bearing shield option; and

(4) Install the new No. 4 bearing shield options.

(5) Modify the turbine exhaust case to relocate the No. 4 bearing pressure and scavenge tube ports to below the engine centerline;

(6) Replace the internal No. 4 bearing pressure and scavenge tubes;

(7) Modify or replace the turbine case cooling brackets to support the new No. 4 bearing pressure and scavenge tubes;

(8) Replace the turbine case manifolds as necessary; and

(9) Install the new brackets and clamps to support the new routing configuration.

(h) Terminating Action to the Repetitive Inspections and Cleaning

Performing the modifications specified in paragraphs (g)(1) through (g)(9) of this AD is terminating action for the repetitive inspections and cleanings specified in paragraph (f)(2) of this AD.

(i) Definition of Shop Visit

For the purpose of this AD, a shop visit is when the engine is inducted into the shop for any maintenance involving the separation of pairs of major mating engine flanges (lettered flanges). However, the separation of engine flanges solely for the purposes of transporting the engine without subsequent engine maintenance is not an engine shop visit.

(j) Alternative Methods of Compliance (AMOCs)

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

(k) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) Pratt & Whitney ASB No. PW4ENG–A72–436; SB No. PW4ENG–79–76; and SB No. PW4ENG–72–472, pertain to the subject of this AD.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. For information on the availability of this material at the FAA, call 781–238–7125.

(l) Material Incorporated by Reference

None.

Issued in Burlington. Massachusetts, on March 19, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–6996 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. FDA–2012–N–0205]

Agreements and Memoranda of Understanding Between the Food and Drug Administration and Other Departments, Agencies, and Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes technical changes that will update a requirement that many of our written agreements and memoranda of understanding (MOUs) with other departments, Agencies, and organizations be published in the **Federal Register**. Because we already post and will continue to post our ongoing agreements and MOUs with other departments, Agencies, and organizations on our Web site upon their completion, this requirement is no longer necessary. This direct final rule, accordingly, eliminates it. We are making these technical changes to conserve Agency time and resources, reduce government paperwork, and eliminate unnecessary **Federal Register** printing costs while continuing to afford public access to these documents. We are proceeding in accordance with our direct final rule procedures.

We are publishing a companion proposed rule under our usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event we receive any significant adverse comments and withdraw this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

DATES: This rule is effective August 6, 2012. Submit either electronic or written comments on or before June 6, 2012. If we receive no significant adverse comments within the specified comment period, we will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0205, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–0205 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4706, FAX: 301–847–8616, email: *daniel.sigelman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 3, 1974 (39 FR 35697), we announced that copies of all our MOUs transacted with

government Agencies and nongovernment organizations were available for public review at our offices during working hours and would be published in the **Federal Register**. We subsequently codified this policy in the **Federal Register** of December 24, 1974 (39 FR 44602 at 44651) and recodified it where it currently appears at § 20.108 (21 CFR 20.108) in the **Federal Register** of March 22, 1977 (42 FR 15616 at 15625).

Consumers, industry, professional groups, associations, educators, and other government Agencies had manifested widespread interest in the texts of these MOUs. The intent of § 20.108 was to promote transparency by providing access to these stakeholders.

This direct final rule will eliminate the requirement in current § 20.108(c) that our agreements and MOUs with other departments, Agencies, and organizations be published in the **Federal Register** on an individual basis and instead will require that they be posted on our Web site as completed. We increasingly rely on Internet-based communications to ensure and promote transparency in our operations and activities. So it is with this direct final rule, which merely recognizes and codifies our already established practice of making our ongoing agreements and MOUs with other departments, Agencies, and organizations publicly available on our Web site. At the time of this writing, each such publicly disclosable agreement and MOU can be accessed at one of the following three Food and Drug Administration (FDA) Web site locations: *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/default.htm; http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/AcademiaMOUs/default.htm;* or *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/OtherMOUs/default.htm.*

Because all publicly disclosable agreements and MOUs are posted on our Web site, it is no longer necessary to require, as does current § 20.108(b), that a permanent file of them be available for public review during working hours in the Agency's Freedom of Information Public Room. Accordingly, this rule will revise current § 20.108(b).

The public's access to an FDA Web site that is regularly updated to include agreements and MOUs as they are completed has already greatly enhanced the speed, ease, and convenience with which stakeholders can obtain and review these documents.

The rule's technical changes will lessen demands on the time of our staff and reduce the government paperwork and printing costs associated with **Federal Register** publication of newly completed agreements and MOUs with other departments, Agencies, and organizations. At the same time, it will continue to ensure, consistent with the underlying intent of § 20.108, the accessibility of records of widespread interest to consumers, industry, professional groups, associations, educators, and other government Agencies.

Currently, § 20.108(c) treats our cooperative work-sharing agreements with State or local government Agencies differently from our agreements and MOUs with other Agencies and organizations. Because these cooperative work-sharing agreements rarely vary significantly from one another, we decided against publishing their full texts in the **Federal Register** (51 FR 19851, June 3, 1986). Instead, since 1993, we have merely required them to be listed at least once every 2 years in the **Federal Register** (58 FR 48793, September 20, 1993). This direct final rule will end such disparate treatment. Revised § 20.108(b) will apply to all of our written agreements and MOUs with other departments, Agencies, and organizations, including cooperative work-sharing agreements with State or local government Agencies, except for signed agreements and MOUs relating to activities of our Office of Criminal Investigations, which are addressed in § 20.108(d), which will be revised and redesignated as § 20.108(c).

This direct rule does not amend § 20.108(a) (stating that our written agreements and MOUs are available for public disclosure).

II. Direct Final Rulemaking

We have determined that the subject of this rulemaking is suitable and appropriate for a direct final rule because it is intended to make noncontroversial changes to existing regulations, and we do not anticipate receiving any significant adverse comments. In the **Federal Register** of November 21, 1997 (62 FR 62466), we announced the availability of the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance document may be accessed at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

Consistent with our procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comment, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If any significant adverse comments are received during the comment period, we will publish, before the effective date of the direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule using the usual notice-and-comment procedures under the APA (5 U.S.C. 552 *et seq.*). If we receive no significant adverse comment during the specified

comment period, we intend to publish a document in the **Federal Register** confirming the effective date within 30 days after the comment period ends.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not impose any significant costs, we certify that it will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. We do not expect this rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Paperwork Reduction Act of 1995

We have concluded that this direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Environmental Impact

We have determined under 21 CFR 25.33 that this direct final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this direct final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded this direct final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document, and they may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Amend § 20.108 as follows:
■ a. Revise paragraph (b);
■ b. Remove paragraph (c);
■ c. Redesignate paragraph (d) as paragraph (c);
■ d. Revise newly redesignated paragraph (c).

The revisions and redesignations read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

* * * * *

(b) All written agreements and memoranda of understanding between FDA and any entity, including, but not limited to other departments, Agencies, and organizations will be made available through the Food and Drug Administration Web site at *http://www.fda.gov* once finalized.

(c) Agreements and understandings signed by officials of FDA with respect to activities of the Office of Criminal Investigations are exempt from the requirements set forth in paragraph (b) of this section. Although such agreements and understandings will not be made available through the FDA Web site, these agreements will be available for disclosure in response to a request from the public after deletion of information that would disclose confidential investigative techniques or procedures, or information that would disclose guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

Dated: March 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6967 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2012–M–0206]

Medical Devices; Neurological Devices; Classification of the Near Infrared Brain Hematoma Detector

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the Near Infrared (NIR) Brain Hematoma Detector into class II (special controls). The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective April 23, 2012. The classification is applicable beginning December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Daryl Kaufman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2426, Silver Spring, MD 20993–0002, 301–796–6467.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act (21 U.S.C.360c(i)), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Section 513(f)(2) of the FD&C Act provides that any person who submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the FD&C Act. FDA will, within 60 days of receiving this request, classify the device by written order. This classification will be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on March 16, 2010, classifying the Infrascanner into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On April 8, 2010, InfraScan, Inc. submitted a petition requesting classification of the Infrascanner Model 1000 under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name Near Infrared (NIR) Brain Hematoma Detector, and it is identified as a noninvasive device that employs near-infrared spectroscopy that is intended to be used to evaluate suspected brain hematomas.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks:

Identified risk	Mitigation measures
Excessive laser power	Electrical safety and electromagnetic compatibility (EMC).
Interference with other devices	Electrical safety and EMC. Labeling.
Unit (hardware) malfunction	Performance testing (nonclinical and clinical). Software verification, validation, and hazard analysis.
Software malfunction	Software verification, validation, and hazard analysis.
Operator errors	Labeling. Training.
Incorrect result (false positive and negative)	Labeling.
Adverse tissue reaction	Biocompatibility.
Battery failure (failure of device to operate)	Labeling.

FDA believes that the following special controls address these risks to health and provide reasonable assurance of safety and effectiveness: (1) The sale, distribution, and use of this device are restricted to prescription use in accordance with 21 CFR 801.109; (2) The labeling must include specific instructions and the clinical training needed for the safe use of this device; (3) Appropriate analysis/testing should validate EMC, electrical safety, and battery characteristics; (4) Performance data should validate accuracy and precision and safety features; (5) Any elements of the device that may contact the patient should be demonstrated to be biocompatible; and (6) Appropriate software verification, validation, and hazard analysis should be performed. Therefore, on December 13, 2011, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying the classification of the device by adding § 882.1935.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for an NIR Brain Hematoma Detector will need to comply with the special controls named in the regulation.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the NIR Brain Hematoma Detector they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of this device from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different from or in addition to'' certain Federal requirements applicable to devices. 21 U.S.C. 360k; see *Medtronic, Inc.,* v. *Lohr,* 518 U.S. 470 (1996), and *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008). The special controls established by this final rule create ''requirements'' under 21 U.S.C. 360(k).

V. Paperwork Reduction Act of 1995

This final rule establishes special controls that refer to currently approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801 regarding labeling have been approved under OMB control number 0910–0485.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from InfraScan, Inc., April 8, 2010.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 882.1935 is added to subpart B to read as follows:

§ 882.1935 Near Infrared (NIR) Brain Hematoma Detector.

(a) *Identification.* A Near Infrared (NIR) Brain Hematoma Detector is a noninvasive device that employs near-infrared spectroscopy that is intended to be used to evaluate suspected brain hematomas.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 of this chapter;

(2) The labeling must include specific instructions and the clinical training needed for the safe use of this device;

(3) Appropriate analysis/testing should validate electromagnetic compatibility (EMC), electrical safety, and battery characteristics;

(4) Performance data should validate accuracy and precision and safety features;

(5) Any elements of the device that may contact the patient should be demonstrated to be biocompatible; and,

(6) Appropriate software verification, validation, and hazard analysis should be performed.

Dated: March 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6975 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0132]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Broadway Bridge across the Willamette River, mile 11.7, at Portland, OR. This deviation is necessary to accommodate the Race for the Roses event scheduled for April 1, 2012. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 6:30 a.m. on April 1, 2012 through 7:30 a.m. April 1, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0132 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0132 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or

copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested that the Broadway Bascule Bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Race for the Roses event. The Broadway Bridge crosses the Willamette River at mile 11.7 and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.897(c) which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday and also requires advance notification when a bridge opening is needed. This deviation period is from 6:30 a.m. on April 1, 2012 through 7:30 a.m. April 1, 2012. The deviation allows the bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to remain in the closed position and need not open for maritime traffic for one hour from 6:30 a.m. through 7:30 a.m. on April 1, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: February 22, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–6984 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0078]

Drawbridge Operation Regulation; Miami River, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulation; request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the N.W. 12th Avenue Bridge across the Miami River, mile 2.1, in Miami, Florida. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The test deviation is necessary to determine whether possible vehicle traffic congestion during Miami Marlins home baseball games poses a safety concern. This 90 day test deviation will allow the N.W. 12th Avenue Bridge to remain closed to navigation for a short period prior to the start of Miami Marlins home baseball games. Tugs and tugs with tows, public vessels of the United States, and vessels in distress shall be passed at any time.

DATES: This deviation is effective from 6:46 p.m. on April 4, 2012 through 7:30 p.m. on July 3, 2012.

Comments and related material must be received by the Coast Guard on or before August 1, 2012. Requests for public meetings must be received by the Coast Guard on or before May 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0078 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Michael Lieberum, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6744, email *Michael.B.Lieberum@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0078), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0078,'' click ''Search,'' and then click on the balloon shape in the ''Actions'' column. If you submit your comments

by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0078'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for test deviations to drawbridge operating schedules is the Coast Guard's authority to regulate drawbridge operations: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

The purpose of the test deviation is to determine whether the current drawbridge operation schedule meets the needs of navigation and land traffic.

Discussion

The Miami Marlins Organization has requested bridge opening limitations to the N.W. 12th Avenue Bridge over the Miami River mile 2.1, in Miami, Florida, in order to determine whether traffic congestion during Miami Marlins home baseball games poses a safety concern and whether a brief closure will mitigate such congestion. This 90 day test deviation will allow this bridge to remain closed to navigation from 6:46 p.m. until 7:30 p.m., Monday through Friday, during Miami Marlins home baseball games on April 4, 13, 17, 18, 19, 27, 30; May 11, 14, 15, 21, 22, 23, 24, 25, 28, 29, 30; June 5, 6, 7, 8, 11, 12, 13, 22, 25, 26, 27, and 29.

The N.W. 12th Avenue Bridge provides a vertical clearance of 22 feet above mean high water in the closed position, and a horizontal clearance of 150 feet. The normal operating schedule for the bridge is set forth in 33 CFR 117.305(b), which states that the draws of the S.W. First Street Bridge, mile 0.9, up to and including the N.W. 27th Avenue Bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:35 a.m. to 8:59 a.m. and 4:45 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the draws need not open for the passage of vessels.

This 90 day test deviation will be in effect from 6:46 p.m. on April 4, 2012 through 7:30 p.m. on July 3, 2012. Tugs and tugs with tows, public vessels of the United States, and vessels in distress shall be passed at any time.

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

Dated: February 29, 2012.

B.L. Dragon,

Bridge Program Director, Seventh Coast Guard District.

[FR Doc. 2012–6982 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0118]

RIN 1625–AA00

Safety Zones; Fireworks Displays within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the list of permanent safety zones established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect life and property of the maritime public from hazards posed by fireworks displays. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: This rule is effective April 23, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0118 and available online by going to *http://www.regulations.gov*, inserting USCG–2011–0118 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division; telephone 757–398–6204, email *Dennis.M.Sens@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 26, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zones; Fireworks Displays within the Fifth Coast Guard District'' in the **Federal Register** (76 FR 66239). We received no comments on the proposed rule.

Basis and Purpose

The purpose of this final rule is to ensure the safety of life on navigable waters during fireworks events and provide the marine community the opportunity to comment on safety zone locations, size, and length of time the zones will be active.

Background

In this final rule the Coast Guard revises the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations

within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33 CFR 3.25. Currently there are 73 permanent safety zones that are established for annually recurring fireworks displays within the geographic boundaries of the Fifth Coast Guard District.

The Coast Guard is revising the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, by adding 3 new locations, deleting 2 previously established locations and modifying 19 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule increases the total number of permanent safety zones to 74 locations for fireworks displays within the boundary of the Fifth Coast Guard District.

This rule adds 3 new safety zone locations to the permanent safety zones listed in 33 CFR 165.506. The new safety zones include locations at: North Atlantic Ocean, Atlantic City, NJ; Great Wicomico River, Mila, VA; and Cockrell's Creek, Reedville, VA.

The 19 previously established safety zone locations that are modified by this rule are: Severn River and Spa Creek, Annapolis, MD; Baltimore Inner Harbor, Patapsco River, MD, (2 locations); Patuxent River, Calvert County, MD; Chesapeake Bay, Chesapeake Beach, MD; Potomac River, Charles County, MD; Potomac River, Charles County, MD near Mount Vernon; Potomac River, National Harbor, MD; Miles River, St. Michaels, MD; Tred Avon River, Oxford, MD; Upper Potomac River, Alexandria, VA; Anacostia River, Washington, DC; Potomac River, Prince William County, VA; North Atlantic Ocean, Ocean City, NJ; Chesapeake Bay, Norfolk, VA; North Atlantic Ocean, Virginia Beach, VA (2 locations); Pamlico River, Washington, NC; and Motts Channel, Banks Channel, Wrightsville Beach, NC. Safety zone modifications include revision to dates and minor changes to coordinates that define safety zone boundaries.

The Coast Guard is disestablishing 2 safety zones located at Patuxent River, Solomons Island, Calvert County, MD, centered at approximate position latitude 38°19′03″ N, longitude 076°26′07.6″ W and Patuxent River, Solomons Island, MD, centered at approximate position latitude 38°19′21″ N, longitude 076°27′55″ W. All coordinates for these safety zones reference Datum NAD 1983.

The Coast Guard typically receives numerous applications for fireworks displays in these general areas. Previously, a temporary safety zone was established on an emergency basis for each display. This limited the opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the safety zone locations, size, and length of time the zones will be enforced.

Each year organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The Coast Guard will publish notices in the **Federal Register** if an event sponsor reported a change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port will give notice of the enforcement of each safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event. Fireworks barges or launch sites on land used in the locations stated in this rulemaking shall also display a sign labeled ''FIREWORKS—DANGER—STAY AWAY'' * * * The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water. This sign provides on scene notice that the safety zone is or will be enforced on that day. The sign will be diamond shaped, 4 foot by 4 foot with a 3-inch orange retro-reflective border. The word ''DANGER'' shall be 10-inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register** (76 FR 66239). Accordingly, the Coast Guard is establishing 74 safety zones on the specified navigable waters listed within the Table to § 165.506.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant because of the short amount of time that vessels will be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels will not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the safety zones. Advance notifications will also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the safety zones during the times these zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration and, in many of the zones, vessels can transit safely around the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves implementation of regulations at 33 CFR Part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are launched from or immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from barges at or near the shoreline that generally rely on the use of navigable waters as a safety buffer.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, and Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.506 to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

(a) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) The following regulations apply to the fireworks safety zones listed in the Table to § 165.506. These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather, the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) Notification. (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled ''FIREWORKS—DANGER—STAY AWAY''. This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word ''DANGER'' shall be 10 inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Contact Information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (877) 229–0770 or (910) 772–2200.

(d) *Enforcement Period.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
(a.) Coast Guard Sector Delaware Bay—COTP Zone			
1	July 4th	North Atlantic Ocean, Bethany Beach, DE, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N, longitude 075°03′15″ W, adjacent to shoreline of Bethany Beach, DE.
2	Labor Day	Indian River Bay, DE, Safety Zone.	All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N, longitude 075°08′18″ W, about 700 yards east of Pots Net Point, DE.
3	July 4th	North Atlantic Ocean, Rehoboth Beach, DE, Safety Zone.	All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N, longitude 075°04′21″ W, approximately 400 yards east of Rehoboth Beach, DE.
4	July 4th	North Atlantic Ocean, Avalon, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.
5	July 4th, September—2nd Saturday.	Barnegat Bay, Barnegat Township, NJ, Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
6	July 4th	North Atlantic Ocean, Cape May, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
7	July 3rd	Delaware Bay, North Cape May, NJ, Safety Zone.	All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
8	August—3rd Sunday	Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.
9	July 4th, August every Thursday. September—1st Thursday.	Metedeconk River, Brick Township, NJ, Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.
10	July—1st Friday	North Atlantic Ocean, Atlantic City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N, longitude 074°25′58″ W, near the shoreline at Atlantic City, NJ.
11	July 4th, October—1st Saturday.	North Atlantic Ocean, Ocean City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.
12	May—4th Saturday	Barnegat Bay, Ocean Township, NJ, Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W.
13	July 4th	Little Egg Harbor, Parker Island, NJ, Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 100 yards north of Parkers Island.
14	September—3rd Saturday.	Delaware River, Chester, PA, Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.
15	September—3rd Saturday.	Delaware River, Essington, PA, Safety Zone.	All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W.
16	July 4th, Columbus Day, December 31st, January 1st.	Delaware River, Philadelphia, PA, Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29.1″ N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge.
(b.) Coast Guard Sector Baltimore—COTP Zone			
1	April—1st or 2nd Saturday.	Washington Channel, Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′09″ N, longitude 077°01′13″ W, located within the Washington Channel in Washington Harbor, DC.
2	July 4th, December—1st and 2nd Saturday, December 31st.	Severn River and Spa Creek, Annapolis, MD, Safety Zone.	All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′40″ N, longitude 076°28′49″ W; thence to latitude 38°58′26″ N, longitude 076°28′28″ W; thence to latitude 38°58′45″ N, longitude 076°28′07″ W; thence to latitude 38°59′01″ N, longitude 076°28′37″ W, thence to latitude 38°58′57″ N, longitude 076°28′40″ W, located near the entrance to Spa Creek in Annapolis, Maryland.
3	Saturday before Independence Day holiday.	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point.
4	July 4th, December 31st	Patapsco River (Middle Branch), Baltimore, MD, Safety Zone.	All waters of the Patapsco River, Middle Branch, within an area bound by a line drawn from the following points: latitude 39°15′22″ N, longitude 076°36′36″ W; thence to latitude 39°15′10″ N, longitude 076°36′00″ W; thence to latitude 39°15′40″ N, longitude 076°35′23″ W; thence to latitude 39°15′49″ N, longitude 076°35′47″ W; thence to the point of origin, located approximately 600 yards east of Hanover Street (SR–2) Bridge.
5	June 14th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W, located adjacent to the East Channel of Northwest Harbor.
6	May—2nd or 3rd Thursday or Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N, longitude 076°36′31″ W, located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3.
7	May—2nd or 3rd Thursday or Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1.
8	July 4th, December 31st	Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
9	July 4th	Patuxent River, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N, longitude 076°27′45″ W, approximately 800 feet from shore at Solomons Island, MD.
10	July 4th	Chester River, Kent Island Narrows, MD, Safety Zone.	All waters of the Chester River, within an area bound by a line drawn from the following points: latitude 38°58′50″ N, longitude 076°15′00″ W; thence north to latitude 38°59′00″ N, longitude 076°15′00″ W; thence east to latitude 38°59′00″ N, longitude 076°14′46″ W; thence southeast to latitude 38°58′50″ N, longitude 076°14′28″ W; thence southwest to latitude 38°58′37″ N, longitude 076°14′36″ W, thence northwest to latitude 38°58′42″ N, longitude 076°14′55″ W, thence to the point of origin, located approximately 900 yards north of Kent Island Narrows (US–50/301) Bridge.
11	July 3rd	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N, longitude 076°31′30″ W, and within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N, longitude 076°31′29″ W, located near Chesapeake Beach, Maryland.
12	July 4th	Choptank River, Cambridge, MD, Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N, longitude 076°04′46″ W.
13	July—2nd or 3rd Saturday and last Saturday.	Potomac River, Charles County, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20′05″ N, longitude 077°15′00″ W, approximately 500 yards north of the shoreline at Fairview Beach, Virginia.
14	May—last Saturday. July 4th.	Potomac River, Charles County, MD—Mount Vernon, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N, longitude 077°04′47″ W; thence to latitude 38°42′18″ N, longitude 077°04′42″ W; thence to latitude 38°42′11″ N, longitude 077°05′10″ W; thence to latitude 38°42′22″ N, longitude 077°05′12″ W; located at the Mount Vernon Estate, in Fairfax County, Virginia.
15	October—1st Saturday	Dukeharts Channel, Potomac River, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N, longitude 076°44′48″ W, located adjacent to Dukeharts Channel near Coltons Point, Maryland.
16	July—Day before Independence Day holiday. November—3rd Thursday, 3rd Saturday and last Friday. December—1st, 2nd and 3rd Friday.	Potomac River, National Harbor, MD, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N, longitude 077°00′58″ W; thence to latitude 38°46′51″ N, longitude 077°01′15″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland.
17	July 4th, September—last Saturday.	Susquehanna River, Havre de Grace, MD, Safety Zone.	All waters of the Susquehanna River within a 150 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N, longitude 076°04′30″ W, approximately 800 yards east of the waterfront at Havre de Grace, MD.
18	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD, Safety Zone.	All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N, longitude 076°12′51″ W, located at the entrance to Long Haul Creek.
19	June and July—Saturday or Sunday before Independence Day holiday.	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N, longitude 076°10′37″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.
20	July 3rd	Northeast River, North East, MD, Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N, longitude 075°57′00″ W, approximately 400 yards south of North East Community Park.
21	June—2nd or 3rd Saturday. July—1st, 2nd or 3rd Saturday. September—1st or 2nd Saturday.	Upper Potomac River, Alexandria, VA, Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′37″ N, 077°02′02″ W, located near the waterfront of Alexandria, Virginia.
22	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC, Safety Zone.	All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N, longitude 077°00′16″ W, located near the Washington Nationals Ball Park.
23	June—last Saturday. July—3rd, 4th or last Saturday or Sunday.	Potomac River, Prince William County, VA, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′07″ N, longitude 077°15′32″ W, located near Cherry Hill, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
(c.) Coast Guard Sector Hampton Roads—COTP Zone			
1	July 4th	North Atlantic Ocean, Ocean City, MD, Safety Zone.	All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach.
2	May—4th Sunday. June—3rd Monday, and June 29th, July 4th, August—1st and 4th Sunday, September—1st and 4th Sunday.	Isle of Wight Bay, Ocean City, MD, Safety Zone.	All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22′32″ N, longitude 075°04′30″ W.
3	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′57.6″ N, longitude 075°03′55.8″ W.
4	July 4th	Broad Bay, Virginia Beach, VA, Safety Zone.	All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
5	October—1st Friday	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N, longitude 076°47′19″ W.
6	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, Virginia.
7	July 4th	Chincoteague Channel, Chincoteague, VA, Safety Zone.	All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position latitude 37°55′40.3″ N, longitude 075°23′10.7″ W, approximately 900 yards southwest of Chincoteague Swing Bridge.
8	May—1st Friday, July 4th	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N, longitude 076°26′19″ W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
9	July 9th	Chesapeake Bay, Hampton, VA, Safety Zone.	All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02′23″ N, longitude 076°17′22″ W, located near Buckroe Beach.
10	June—4th Friday, July—1st Friday, July 4th.	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier.
11	July 4th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia.
12	Memorial Day, June—1st and 2nd Friday, Saturday and Sunday. July 4th, November—4th Saturday, December—1st Saturday and December 31st, January—1st.	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N, longitude 076°18′10.7″ W; thence to latitude 36°51′7.9″ N, longitude 076°18′01″ W; thence to latitude 36°50′45.6″ N, longitude 076°17′44.2″ W; thence to latitude 36°50′29.6″ N, longitude 076°17′23.2″ W; thence to latitude 36°50′7.7″ N, longitude 076°17′32.3″ W; thence to latitude 36°49′58″ N, longitude 076°17′28.6″ W; thence to latitude 36°49′52.6″ N, longitude 076°17′43.8″ W; thence to latitude 36°50′27.2″ N, longitude 076°17′45.3″ W thence to the point of origin.
13	May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday.	Appomattox River, Hopewell, VA, Safety Zone.	All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19′11″ N, longitude 077°16′55 ″ W.
14	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the center span of the State Route 15 Highway Bridge.
15	May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday, July 4th.	North Atlantic Ocean, Virginia Beach, VA, Safety Zone. A.	All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets.
16	September—last Saturday or October—1st Saturday.	North Atlantic Ocean, VA Beach, VA, Safety Zone. B.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
17	Friday, Saturday, Sunday and Monday—Labor Day Weekend.	North Atlantic Ocean, VA Beach, VA, Safety Zone. C.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets.
18	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.
19	February—4th Saturday, July 4th.	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, Virginia.
20	July 4th	James River, Williamsburg, VA, Safety Zone.	All waters of the James River within a 350 yard radius of approximate position latitude 37°13′23.3″ N, longitude 076°40′11.8″ W, located near Kingsmill Resort.
21	July—3rd, 4th and 5th	Great Wicomico River, Mila, VA, Safety Zone.	All waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position latitude 37°50′31″ N, longitude 076°19′42″ W near Mila, Virginia.
22	July—1st Friday, Saturday and Sunday.	Cockrell's Creek, Reedville, VA, Safety Zone.	All waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position latitude 37°49′54″ N, longitude 076°16′44″ W near Reedville, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone			
1	July 4th, October—1st Friday.	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.
2	April—2nd Saturday, July 4th, August—3rd Monday, October—1st Friday.	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence east to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
3	July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4	July 4th	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch site in approximate position latitude 36°18′00″ N, longitude 076°13′00″ W, approximately 200 yards south of the east end of the Elizabeth City Bascule Bridges.
5	July 4th	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22′48″ N, longitude 075°51′15″ W.
6	July 4th, November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.
7	June—2nd Saturday, July—1st Saturday after July 4th.	Pamlico River, Washington, NC, Safety Zone.	All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at latitude 35°32′27″ N, longitude 077°03′40.5″ W, located 500 yards north of Washington railroad trestle bridge.
8	July 4th	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W; located 420 yards north of the New Bern, Twin Span, high rise bridge.
9	July 4th	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC.
10	July 4th, November—Saturday following Thanksgiving.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11	July 4th	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC.
12	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
13	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.

Dated: March 1, 2012.

William D. Lee,

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

[FR Doc. 2012–6781 Filed 3–22–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0092; FRL–9651–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the limited approval and limited disapproval of West Virginia's Regional Haze State Implementation Plan (SIP) revision. EPA is taking this action because West Virginia's SIP revision, as a whole, strengthens the West Virginia SIP. We are finalizing our limited disapproval of the same SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR). This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA is also approving this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: *Effective Date:* This final rule is effective on April 23, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0092. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by email at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 13, 2011 (76 FR 41158), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of West Virginia. The NPR proposed limited approval and limited disapproval of West Virginia's Regional Haze SIP. The formal SIP revision was submitted by West Virginia Department of Environmental Protection (WVDEP) on June 18, 2008. This revision also meets the requirements of 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

II. Summary of SIP Revision

The SIP revision includes a long term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first planning period, through 2018. West Virginia's Regional Haze Plan contains the emission reductions needed to achieve West Virginia's share of emission reductions and sets the reasonable progress goals for other states to achieve reasonable progress at the two Class I Areas within West Virginia, Dolly Sods Wilderness Area and Otter Creek Wilderness Area. The specific requirements of the CAA and EPA's Regional Haze Rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received two adverse comments on the July 13, 2011 NPR. Both comments raise similar concerns with the NPR and have been combined. A summary of the comments submitted and EPA's responses are provided in section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: The commenter argues that EPA's proposed limited approval/limited disapproval action based on West Virginia's reliance on CAIR is unwarranted and should be withdrawn. Instead, the commenter states that EPA should grant full and unconditional approval of the West Virginia regional haze SIP. The commenter disagrees that CAIR renders the State's SIP unable to satisfy all of the CAA's regional haze SIP requirements. The commenter notes that West Virginia's SIP was submitted prior to the remand of CAIR and relied on the requirements under 40 CFR 51.308(e)(4), which remain in effect at this time. The commenter argues that as a result, the West Virginia SIP is entirely consistent with the applicable law. Moreover, the commenter highlights that the visibility-improvement benefits from CAIR's emission reductions are likely to be replicated, or indeed exceeded, by the visibility benefits projected to result from the Cross State Air Pollution Rule. The commenter argues that EPA does not have a basis to propose or promulgate disapproval or limited disapproval of a Regional Haze SIP due to its reliance on CAIR and on 40 CFR 51.308(e)(4), because EPA has not determined, based on a thorough and defensible analysis, that the emission reductions and associated visibility-improvement benefits that are likely to result from the final CSAPR will not be at least comparable to those achieved under CAIR. Because the SIP is fully compliant with the relevant

regulations as they exist today, and EPA, at this time, has not made a determination that CSAPR will not satisfy the CAA's Best Available Retrofit Technology (BART) alternative requirements for nitrogen oxides (NO_X) and sulfur dioxide (SO_2) emissions from electric generating units (EGUs) and cannot be used, in at least the same measure as CAIR was used, to help meet reasonable progress requirements for regional haze, the commenter believes that the only proper course of action for EPA is to promptly promulgate a full approval of the West Virginia SIP.

Response: The requirements for a BART alternative program, specific to trading programs in 40 CFR 51.308(e)(2) state that ''such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART.'' EPA's analysis, in 2005, showing that CAIR would provide for greater reasonable progress than BART, was based on the then reasonable assumption that CAIR met the requirements of the CAA and would remain in place. EPA's Transport Rule, commonly referred to as the Cross State Air Pollution Rule, sunsets the requirements of CAIR. EPA's decision to sunset CAIR is the result of a decision by the DC Circuit remanding CAIR to EPA and leaving CAIR in place only ''temporarily,'' as noted in our notice of proposed rulemaking and by the commenters. As such, notwithstanding the regulatory text in 40 CFR 51.308(e)(4), we cannot fully approve the West Virginia Regional Haze SIP which relies heavily on CAIR as part of its long-term strategy and to meet the BART requirements.

EPA does agree that the Transport Rule is likely to result in visibility improvements at least comparable to CAIR; however, nothing in West Virginia's Regional Haze SIP suggests that the State relied on the Transport Rule to meet its regional haze obligations. The EPA has completed an analysis and has proposed the Transport Rule as an alternative to BART for EGUs located in the Transport Rule states (which include West Virginia). 76 FR 82219. Given the significance of the emissions reductions from CAIR to West Virginia's demonstration that it has met the requirements of the Regional Haze Rule, EPA is issuing a limited disapproval of the West Virginia SIP. Although CAIR is currently being administered by EPA pursuant to an order by DC Circuit in *EME Homer Generation, L.P.* v. *EPA,* it will not remain in effect indefinitely. For this reason, EPA cannot fully approve Regional Haze SIP revisions that rely on CAIR for emission reduction measures.

IV. Final Action

EPA is finalizing its limited approval and limited disapproval of the revision to the West Virginia SIP submitted on June 18, 2008, that addresses regional haze for the first implementation period. EPA is issuing a limited approval of the West Virginia SIP since overall the SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having Federal approval and enforceability than it would without those measures being included in the State's SIP.

EPA is finalizing the limited disapproval of those portions of West Virginia's SIP that rely on CAIR. This final limited disapproval does not affect the Federal enforceability of the measures in the West Virginia SIP revision nor prevent state implementation of these measures. The final limited disapproval provides EPA the authority to issue a Federal Implementation Plan (FIP) at any time, and obligates EPA to take such action no more than two years after the effective date of the final limited disapproval action. EPA has proposed a partial regional haze FIP that would provide that the BART requirements for SO_2 and NO_X emissions from EGUs in West Virginia are satisfied by the already-promulgated Transport Rule FIP applicable to EGU sources in West Virginia, as would be allowed by a proposed revision to the Regional Haze Rule that was included in the same notice published on December 30, 2011. 76 FR 82219. EPA is also approving this revision as meeting the applicable visibility related requirements of the CAA section 110(a)(2) including, but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the

aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's limited approval and limited disapproval does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this Virginia Regional Haze proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Submission to Congress and the Comptroller General

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This limited approval and limited disapproval of the West Virginia Regional Haze SIP may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 15, 2012.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:

52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Plan	Statewide	6/18/08	3/23/12 *[Insert page number where the document begins]*.	§52.2533(d); Limited Approval.

■ 3. Section 52.2533 is amended by adding paragraph (d) to read as follows:

52.2533 Visibility protection.

* * * * *

(d) Limited approval of the Regional Haze Plan submitted by West Virginia on June 18, 2008; limited disapproval for those sections relying upon emission reductions from the Clean Air Interstate Rule (CAIR).

[FR Doc. 2012–7027 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0671; FRL–9633–4]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Volatile Organic Compound Emission Control Measures for Chicago and Metro-East St. Louis Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, under the Clean Air Act (the Act), revisions to the Illinois State Implementation Plan (SIP) submitted on July 29, 2010, September 16, 2011 and September 29, 2011. The purpose of these rules is to satisfy the Act's requirement that States revise their SIPs to include reasonably available control technology (RACT) for sources of volatile organic compound (VOC) emissions in moderate ozone nonattainment areas. Illinois' VOC rules provide RACT requirements for the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These rules are approvable because they are consistent with the Control Technique Guideline (CTG) documents issued by EPA in 2006, 2007 and 2008 and satisfy the RACT requirements of the Act. EPA proposed this rule for approval on November 30, 2011 and received comments from Illinois EPA.

DATES: This final rule is effective on April 23, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–R05–OAR–2010–0671. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed approval?
II. What action is EPA taking today and what is the basis of this action?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed approval?

EPA proposed this rule for approval on November 30, 2011 and received comments from Illinois EPA. Illinois EPA submitted comments in support of this rule on December 16, 2011. In its comments Illinois identified the following errors (with the appropriate corrections) that were made in the November 30, 2011 proposed approval. These corrections are:

(1) Page 74015, Section IV, Subsection (1): The title should reference Part 211 instead of Section 211.

(2) Page 74015, Section IV, Subsection (3): The end of the first paragraph implies that Illinois' surface coating regulations at 35 Ill. Adm. Code 218.208 and 219.208 allow an equivalent applicability threshold of 2.7 tons of VOM per 12 month rolling period. Illinois' rules contain no such equivalent threshold.

(3) Pages 74015–74016, Section IV, Subsections (3) and (5): In the titles, the second set of section references should be to Part 219, not 218.

(4) Page 74016, Section IV, Subsection (6): In the title, Illinois' regulations specific to fiberglass boat manufacturing

materials are contained in 35 Ill. Adm. Code 218.890 to 894 and 219.890 to 894. Sections 895 to 899 are (unofficially) reserved, and Sections 900 to 904 regard miscellaneous industrial adhesives. EPA agrees with Illinois' corrected description of its rules.

II. What action is EPA taking today and what is the basis of this action?

EPA is taking final action to approve into Illinois' SIP volatile organic material (VOM), which is the same as volatile organic compound, RACT rules for the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas that were submitted on July 29, 2010, September 16, 2011 and September 29, 2011. The purpose of these rules is to satisfy the Act's requirement that States revise their SIPs to include RACT for sources of VOC emissions in moderate ozone nonattainment areas. Illinois' VOM rules provide RACT requirements for the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. With respect to Illinois EPA's second comment, it should be noted that Illinois' VOM coating rules have a 15 pounds VOM/day applicability cutoff which is consistent with EPA VOC RACT guidance. Although EPA's coating CTGs allow an alternative applicability cutoff of 2.7 tons VOC/year, this alternative is not required. These rules are approvable because they are consistent with the CTG documents issued by EPA in 2006, 2007 and 2008 and satisfy the RACT requirements of the Act.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 31, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c) (189) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(189) On July 29, 2010, September 16, 2011 and September 29, 2011 Illinois submitted VOM RACT rules for the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These rules are consistent with the Control Technique Guideline documents issued by EPA in 2006, 2007 and 2008 and satisfy the RACT requirements of the Act. On February 28, 2011, Illinois EPA submitted a confirmation that the sewage treatment plant exemption in Subpart TT of Parts 218 and 219 does not apply to industrial wastewater. This clarification clearly establishes that VOM emissions from major non-CTG industrial wastewater operations are regulated by Subpart TT.

(i) *Incorporation by reference.* The following sections of Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, are incorporated by reference:

(A) Part 211: Definitions and General Provisions, Sections 211.1000, 211.1745, 211.1878, 211.1885, 211.2359, 211.2368, 211.2615, 211.2830, 211.2840, 211.2965, 211.3215, 211.3305, 211.3555, 211.3705, 211.3707, 211.4065, 211.5335, 211.5535, 211.5585, 211.5860, 211.5875,

211.5885, 211.6405, 211.6425, 211.6535, 211.7290; effective June 25, 2010.

(B) Part 211: Definitions and General Provisions, Sections 211.101, 211.102, 211.200, 211.233, 211.235, 211.260, 211.481, 211.492, 211.540, 211.715, 211.735, 211.820, 211.825, 211.880, 211.954, 211.965, 211.1128, 211.1455, 211.1560, 211.1565, 211.1655, 211.1700, 211.1872, 211.1876, 211.1877, 211.1880, 211.1882, 211.1883, 211.2040, 211.2055, 211.2210, 211.2310, 211.2320, 211.2360, 211.2369, 211.2415, 211.2525, 211.2622, 211.2825, 211.2955, 211.2956, 211.2958, 211.2960, 211.2980, 211.3095, 211.3120, 211.3240, 211.3505, 211.3665, 211.3760, 211.3775, 211.3785, 211.3820, 211.3925, 211.3961, 211.3966, 211.3967, 211.3968, 211.3969, 211.3975, 211.4052, 211.4080, 211.4220, 211.4285, 211.4455, 211.4540, 211.4735, 211.4760, 211.4765, 211.4768, 211.4769, 211.4895, 211.4900, 211.5012, 211.5061, 211.5062, 211.5075, 211.5090, 211.5400, 211.5520, 211.5550, 211.5800, 211.5890, 211.5985, 211.5987, 211.6012, 211.6015, 211.6017, 211.6020, 211.6063, 211.6065, 211.6400, 211.6427, 211.6460, 211.6585, 211.6640, 211.6670, 211.6690, 211.6720, 211.6740, 211.6780, 211.6825, 211.6885, 211.7220, 211.7240; effective September 14, 2010.

(C) Part 211: Definitions and General Provisions, Sections 211.493, 211.2200, 211.2358, 211.2800, 211.3985, 211.4460, 211.5140, 211.6587, 211.6635; effective July 27, 2011.

(D) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart F: Coating Operations, Section 218.218; effective March 23, 2010.

(E) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart E: Solvent Cleaning, Section 218.181, Subpart H: Printing and Publishing, Sections 218.403, 218.405, 218.406, 218.407, 218.408, 218.410, 218.412, 218.413, 218.416; effective June 25, 2010.

(F) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A: General Provisions, Sections 218.106, 218.112, Subpart F: Coating Operations, Sections 218.205, 218.208, 218.210, 218.212, 218.219, Subpart II: Fiberglass Boat Manufacturing Materials, Section 218.890, Subpart JJ: Miscellaneous Industrial Adhesives, Section 218.900; effective September 14, 2010.

(G) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A: General Provisions, Section 218.105, Subpart E: Solvent Cleaning, Section 218.187, Subpart F: Coating Operations, Sections 218.204, 218.207, 218.211, 218.217, Subpart H: Printing and Publishing, Sections 218.401, 218.402, 218.404, 218.409, 218.411, 218.415, 218.417, Subpart II: Fiberglass Boat Manufacturing Materials, Sections 218.891, 218.892, 218.894, Subpart JJ: Miscellaneous Industrial Adhesives, Sections 218.901, 218.902, 218.903, 218.904; effective July 27, 2011.

(H) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart F: Coating Operations, Section 219.218; effective March 23, 2010.

(I) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart E: Solvent Cleaning, Section 219.181, Subpart H: Printing and Publishing, Sections 219.402, 219.403, 219.405, 219.406, 219.407, 219.408, 219.410, 219.412, 219.413, 219.416; effective June 25, 2010.

(J) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart A: General Provisions, Sections 219.106, 219.112, Subpart F: Coating Operations, Sections 219.205, 219.208, 219.210, 219.212, 219.219, Subpart II: Fiberglass Boat Manufacturing Materials, Section 219.890, Subpart JJ: Miscellaneous Industrial Adhesives, Section 219.900; effective September 14, 2010.

(K) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart A: General Provisions, Section 219.105, Subpart E: Solvent Cleaning, Section 219.187, Subpart F: Coating Operations, Sections 219.204, 219.207, 219.211, 219.217, Subpart H: Printing and Publishing, Sections 219.401, 219.404, 219.409, 219.411, 219.415, 219.417, Subpart II: Fiberglass Boat Manufacturing Materials, Sections 219.891, 219.892, 219.894, Subpart JJ: Miscellaneous Industrial Adhesives, Sections 219.901, 219.902, 219.903, 219.904; effective July 27, 2011.

(ii) *Additional material.* On February 28, 2011, Illinois EPA submitted an email confirmation that the sewage treatment plant exemption in Subpart TT of Parts 218 and 219 does not apply to industrial wastewater.

[FR Doc. 2012–6938 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110901552–20494–02]

RIN 0648–BB34

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 17

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

ACTION: Final rule.

SUMMARY: This final rule implements measures in Amendment 17 to the Northeast Multispecies Fishery Management Plan which was approved on March 8, 2012. This action amends the Northeast Multispecies Fishery Management Plan to explicitly define and facilitate the effective operation of state-operated permit banks. As proposed in Amendment 17, state-operated permit banks may be allocated an annual catch entitlement and specifically authorized to provide their annual catch entitlement and/or days-at-sea to approved groundfish sectors to enhance the fishing opportunities available to sector members. This action also approves a provision allowing NMFS to issue a days-at-sea credit to a vessel that cancels a fishing trip prior to setting or hauling fishing gear.

DATES: This rule is effective April 23, 2012.

ADDRESSES: Copies of the Amendment 17 document, including an environmental assessment and a regulatory impact review, are available from the Northeast Regional Office of the National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at *http://www.nero.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Northeast Regional Office and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9182; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized the allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, each sector must prepare a sector operations plan, which must be submitted to NMFS along with signed sector member contracts and an environmental assessment (EA), or other appropriate environmental analysis. Amendment 16 (74 FR 18262; April 9, 2010) expanded sector management measures and authorized 17 new sectors, for a total of 19 sectors. The amendment defined a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector's TAC is referred to as an annual catch entitlement (ACE). Each sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contribution (PSC) of permits participating in that sector. Regional Administrator (RA) approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each fishing year. Each sector is responsible for monitoring its catch, reporting catch to NMFS, and ensuring it does not exceed its ACE.

In 2009 and 2010, NOAA provided nearly $5 million in funding through Federal grants to the states of Maine, New Hampshire, and Rhode Island for the express purpose of establishing several ''permit banks'' of NE multispecies fishing vessel permits.[1] The permit banks were developed jointly by the states and NMFS, through memoranda of agreement (MOA), to help promote the effective implementation of catch share programs in New England and to mitigate some of the potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses. The intent of the permit bank program is for states to use the funding to obtain fishing vessel permits and then to provide the fishing opportunities associated with those permits in the form of ACE and/or days-at-sea (DAS) to qualified fishermen.

State-operated permit banks are not specifically recognized under the current NE Multispecies FMP, and are not allocated, or authorized to transfer, ACE outside of the current sector program. Because of this, the only mechanism currently available for a state-operated permit bank to be allocated and to transfer ACE is for the state to either enroll in an existing sector or to form its own sector with other permit holders. Both of these methods complicate the operation of the state permit banks and add administrative requirements that are redundant with requirements of memoranda of agreement (MOA) that were signed with the states and NOAA's National Marine Fisheries Service (NMFS) as a prerequisite for receiving the grant awards.

This action implements Amendment 17 to the NE Multispecies FMP which was approved on March 8, 2012. The amendment as implemented explicitly defines and facilitates the effective operation of state-operated permit banks by specifically recognizing state-operated permit banks under the provisions of the NE Multispecies FMP. As such, a state-operated permit bank can now be allocated ACE and is able to transfer ACE to an approved sector without having to enroll in another sector or create its own sector. Separately from Amendment 17, this action also amends the regulations implementing the NE Multispecies, Monkfish, and Atlantic Sea Scallop FMPs to include a provision that would allow NMFS to issue a DAS credit to a vessel that canceled a fishing trip prior to setting or hauling fishing gear and if the vessel, therefore, did not catch or land fish at any time on the trip.

A notice of availability for Amendment 17 was published in the **Federal Register** on December 12, 2011 (76 FR 77200) and public comments were accepted through February 10, 2012. A proposed rule to implement measures in Amendment 17 was published in the **Federal Register** on December 22, 2011 (76 FR 79612) and public comments were accepted through January 23, 2012. The Amendment 17 proposed rule included a detailed description of sector management, state-operated permit banks, the proposed measures, and other issues that influenced the development of this action. Amendment 17 was approved on March 8, 2012.

Approved Measures

The following summarizes the approved Amendment 17 measures as well as the DAS credit provision as previously proposed. These measures build upon the provisions implemented by previous management actions and are intended to either supplement or replace existing regulations that would otherwise apply to state-operated permit banks. This final rule also revises regulations that are not specifically identified in Amendment 17, but are necessary to clarify existing provisions, as described further below.

1. Definition of a State-Operated Permit Bank

Amendment 17 defines a state-operated permit bank as a permit depository established through an agreement between NOAA and a state in which Federal grant funds are used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by the state to qualified sectors. State-operated permit banks are not equivalent to groundfish sectors.

State-operated permit banks shall be deemed to meet the definition above, and therefore qualify to operate as intended in this action, so long as the state-operated permit bank was initially established using a Federal grant award from NOAA for this purpose and the state maintains a valid MOA with NMFS. The MOA between NMFS and each state establishes the parameters that the state must follow in order to receive Federal grant funding that is then applied towards purchasing NE multispecies permitted vessels and transferring the ACE allocated to the permit bank to approved sectors. A state-operated permit bank must have a valid MOA in order to operate. State-operated permit banks are no longer subject to the requirement that three or more persons be included in a sector.

2. Clarification and Streamlining of Administrative Procedures and Requirements for State-Operated Permit Banks

This action allows state-operated permit banks to be allocated ACE and/or DAS and authorizes them to provide ACE to approved groundfish sectors to enhance the fishing opportunities available to sector members. State-operated permit banks are required to

[1] $1 million initially provided to the Commonwealth of Massachusetts for a permit bank has been, at the request of the Commonwealth, reprogrammed for use in a revolving loan fund intended to serve a similar purpose as the permit bank.

comply with the terms and conditions of any applicable Federal grant agreement (i.e., a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank), as well as meet the requirements specified in an MOA established with NMFS for administering the permit bank.

State-operated permit banks are required to report to the Council annually on the performance of the permit bank. Such reports must include, to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all reporting requirements within the MOA. State-operated permit banks are exempt from many of the sector reporting requirements because state-operated permit banks are prohibited from actively fishing.

State-operated permit banks are not authorized to acquire, except as described below, additional ACE or DAS for a fishing year through a transfer from a sector or other vessels because the purpose of the state-operated permit banks is to transfer out ACE and DAS to sector fishermen in need of additional allocation, not to accumulate ACE or DAS. However, if a sector receives a transfer of ACE, or a vessel receives DAS, from a state-operated permit bank but wishes to return either the (unused) ACE or DAS to the permit bank, NMFS could, upon written agreement by both parties, void the initial transfer, thereby returning the ACE or DAS to the permit bank. The state permit bank would then be free to redistribute the available ACE or DAS to another sector or vessel. In addition, and subject to the terms and conditions of the states' permit bank MOAs with NMFS, state-operated permit banks are authorized to transfer ACE, on a stock-by-stock basis, to other state-operated permit banks for the purpose of maximizing the fishing opportunities made available by the permit banks to sector members. For example, the Rhode Island state permit bank could transfer ACE for Gulf of Maine cod to the Maine state permit bank in exchange for ACE for Southern New England/Mid-Atlantic yellowtail flounder.

For the reasons stated in the proposed rule, NMFS highlighted the need for public comment in the proposed rule on two specific provisions of Amendment 17 raised by the New England Fishery Management Council, detailed in the September 7, 2011, ''deeming'' letter to the Regional Administrator.

First, NMFS specifically solicited public comment on whether state-operated permit banks should be prohibited from using additional funds to acquire permits prior to Council review. The State of New Hampshire commented that it was ''not opposed'' to the proposed regulation as written. However, NMFS has determined that the proposed rule is inconsistent with Amendment 17 language and it is not appropriate in the context of Amendment 17 for NMFS to prohibit the mere acquisition of a permit that may or may not be used in the state-operated permit bank. Moreover, there is nothing in the current regulations that prohibits any interested party, including a state, from acquiring a permit. Therefore, the Council cannot prohibit a state from acquiring a permit with additional funding it receives or impose any conditions on the acquisition of such a permit. If more funds become available to a state, the use of those additional funds to allocate or transfer ACE by a state-operated permit bank as defined in this action must first be reviewed by the Council for consistency with the goals and objectives of the NE Multispecies FMP prior to the state using those funds outside of the sector process. A state would not be authorized to allocate or transfer any ACE that may be associated with new permits obtained as a result of the additional funds, unless the state either: (1) provides the Council the opportunity to review the implications of the expanded permit bank to the goals and objectives of the NE Multispecies FMP; or (2) forms or joins an approved groundfish sector. This language is consistent with the language in Amendment 17 as approved by the Council. The regulations implemented by this rule have been changed accordingly.

Second, NMFS sought public comment on whether state-operated permit banks should be allowed to carry-over unused ACE and DAS from one fishing year into the next. In deeming the proposed regulations necessary and appropriate for implementing Amendment 17, the Council questioned whether the carryover of unused ACE provision for sectors in current regulations should be included in these implementing regulations even though the amendment is silent on this issue. However, the Council did not submit a comment on this issue. In the absence of any comments on this issue, and because the amendment itself and accompanying regulations do not propose carry-over provisions, NMFS cannot unilaterally add such a provision to this final rule. Moreover, NMFS summarized in the proposed rule that there are reasons distinct from the sector process that explain why carry-over may not be appropriate for state-operated permit banks. Therefore, state-operated permit banks cannot carry-over uncaught ACE from one fishing year to the next.

3. Canceled Trip DAS Credit

This final rule implements a provision that is separate from Amendment 17, allowing NMFS to credit DAS to a vessel that cancels a fishing trip prior to setting or hauling fishing gear and which, therefore, does not catch or land fish at any time on the trip. This provision applies to all fisheries that operate under a DAS management system, specifically the NE multispecies, monkfish, and Atlantic sea scallop fisheries. Because this DAS credit would only be granted for situations in which no fishing activity occurs, it is not expected to have a negative impact on fishing-related mortality in the DAS fisheries. This measure will be applied retroactively for the 2011 fishing years for those fisheries (the fishing years are not the same).

To ensure the enforceability of this provision, vessels seeking a DAS credit must notify NMFS' Office of Law Enforcement (OLE) to coordinate a monitored landing event. Vessels that are required to use a vessel monitoring system (VMS) must send a VMS email to OLE at the earliest opportunity prior to crossing the VMS demarcation line upon return to port. Vessels not required to use a VMS must use the interactive voice response (IVR) line to make the notification. Additionally, both VMS and IVR vessels must submit a written DAS credit form along with the vessel trip report for the canceled trip to NMFS.

The following information must be submitted on the written DAS credit request form: Owner/corporation name; vessel name; permit number; U.S. Coast Guard documentation number or state registration number; vessel operator name; trip departure and landing date; date and time VMS email was sent or IVR backup line was called; and reason for canceling the trip. Forms must be submitted within 30 days from the day the vessel returned to port on the canceled trip.

For DAS credits that are requested near the end of the fishing year, the credited DAS will apply to the year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year can be carried over into the next fishing year, provided they do not to exceed the maximum number of DAS allowed to be

carried over for the fishery being credited.

Comments and Responses

Three comments were received on the proposed rule. Two comments, one from the State of New Hampshire, and one from a member of the public, expressed general support for the amendment. One comment from a member of the fishing industry expressed concern about common pool vessels being excluded from state-operated permit bank ACE.

Comment 1: The State of New Hampshire did not oppose the Council reviewing plans by its state-operated permit bank prior to acquiring additional Federal fishing permits.

Response: NMFS has determined that the proposed regulation for this provision is not consistent with Amendment 17 and it is not appropriate for NMFS to prohibit the mere acquisition of a permit by a state in the context of Amendment 17. In addition, nothing in the current regulations for this provision prohibits any interested party, including a state-operated permit bank, from acquiring a permit. Therefore, this rule does not prohibit a state from acquiring a permit or impose conditions on a state regarding such an acquisition. Rather, this rule provides that if more funds from any source become available to a state to obtain additional permits, the state-operated permit bank may not allocate or transfer ACE that may be associated with the new permit until the state-operated permit bank provides the Council with the opportunity to review the implications of the expanded permit bank with the goals and objectives of the NE Multispecies FMP. However, once the Council has the opportunity to conduct such a review, the state-operated permit bank may allocate or transfer any such ACE provided it is consistent with the MOAs with NOAA and other applicable law.

Comment 2: The State of New Hampshire was not opposed to allowing DAS credit to vessels cancelling fishing trips prior to engaging in fishing activity for fisheries managed under a DAS system.

Response: NMFS agrees with this comment and has approved this measure in this action.

Comment 3: One individual expressed concern that fishermen not enrolled in a sector (i.e., the common pool) are unable to acquire ACE from state-operated permit banks.

Response: Prior to Amendment 17, the only entities able to transfer ACE were approved sectors. Amendment 17 allows a state-operated permit bank to transfer ACE and/or DAS to another sector without becoming or enrolling in a sector. Neither sectors nor state-operated permit banks are able to transfer ACE to an individual not enrolled in a sector. However, common pool vessels may lease DAS from a state-operated permit bank for cooperative research purposes. Allowing a permit bank to transfer ACE to an individual fisherman in the common pool is inconsistent with current regulations and the FMP and therefore prohibited. Moreover, because this type of transfer regarding sectors was not proposed in Amendment 17, NMFS may not unilaterally add it.

Changes From the Proposed Rule

As described above, NMFS has determined that the proposed rule is inconsistent with Amendment 17 language, and that it is not appropriate in the context of Amendment 17 for NMFS to prohibit the mere acquisition of a permit that may or may not be used in the state-operated permit bank. Therefore, the regulation at 50 CFR 648.87(e)(6) has been modified in this final rule to be consistent with the language in Amendment 17 as approved by the Council.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 17 to the NE Multispecies FMP is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and that has been submitted for approval by OMB under control numbers 0648–0202 and 0648–1212. NMFS will notify the affected public through a follow-up notice in the **Federal Register** announcing OMB's clearance of the collection-of-information requirements. Under this action, in order to request a DAS credit, vessel owners are required to provide NMFS with an initial notification as well as the submission of a DAS credit request form. The public burden for requesting a DAS credit is estimated to average 15 minutes per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: March 19, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator, For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, revise the definition for ''Annual catch entitlement (ACE)'' and add a new definition for ''State-operated permit bank'' in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Annual catch entitlement (ACE), with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP,

including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

* * * * *

State-operated permit bank means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons and that meets the requirement of § 648.87(e).

* * * * *

■ 3. In § 648.53, revise paragraph (f) to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(f) *DAS credits*—(1) *Good Samaritan credit.* A limited access vessel operating under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(2) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (d) of this section.

* * * * *

■ 4. In § 648.82, remove and reserve paragraph (m) and revise paragraph (f) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(f) *DAS credits*—(1) *Good Samaritan credit.* A limited access vessel fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, shall not accrue DAS for the time documented.

(2) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason

for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(3) *DAS credit for standing by entangled whales.* A limited access vessel fishing under the DAS program that reports and stands by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(i) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(ii) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(iii) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(iv) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status; date of first communication with the USCG; and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

* * * * *

■ 5. In § 648.87, add paragraph (e) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(e) *State-operated permit bank.* A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank, including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) *Eligibility.* If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) *Allocation and utilization of ACE*—(i) *Allocation of ACE.* The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be ''ACE permits,'' pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) *Acquiring ACE.* Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to

another qualifying sector during that fishing year.

(iii) *Transferring ACE.* Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(4) *Allocation and utilization of days-at-sea*—(i) *Allocation of DAS.* The number of DAS available for a state-operated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(v) of this section to be either ''ACE permits'' or ''common pool permits'' for that fishing year, consistent with the terms of the state's permit bank MOA.

(ii) *Acquiring DAS.* A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) *Annual report.* A state-operated permit bank shall report to the Council annually on the performance of the state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) *Use of additional funds.* If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not allocate or transfer any ACE that may be associated with any new permit purchased with those funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) *Violation of the terms and conditions applicable to a state-operated permit bank.* If a state or state-operated permit bank violates or fails to comply with any of the requirements and conditions specified in this section or in the MOA referenced in paragraph (e)(1) of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

■ 6. In § 648.90, revise paragraph (a)(2)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) * * *

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; and designating habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

* * * * *

■ 7. In § 648.92, revise paragraph (b)(4) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(4) *DAS credits*—(i) *Good Samaritan credit.* A limited access vessels fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(ii) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that end a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements.

(A) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(B) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name;

vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(C) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(D) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (b)(4)(ii)(B) and (C) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (b)(4)(ii)(B) and (C) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(E) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(F) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB112

Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet (15.2 Meters) Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) greater than or equal to 50 feet (15.2 meters (m)) in length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 20, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 2,372 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2012 Pacific cod TAC apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,272 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod for CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2012.

Steven Thur,

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

[FR Doc. 2012–7043 Filed 3–20–12; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB111

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 72 hours. This action is necessary to fully use the B season allowance of the 2012 total allowable catch of pollock in Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2012, through 1200 hrs, A.l.t., March 24, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 4, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0066, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0066 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address 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.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on March 10, 2012 (77 FR 14698, March 13, 2012).

As of March 15, 2012, NMFS has determined that approximately 1,389 metric tons of pollock remain in the directed fishing allowance for pollock in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the B season allowance of the 2012 TAC of pollock in Statistical Area 630 of the GOA, NMFS is terminating the previous closure and is reopening directed fishing pollock in Statistical Area 630 of the GOA, effective 1200 hrs, A.l.t., March 21, 2012.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA, effective 1200 hrs, A.l.t., March 24, 2012. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the directed pollock fishery in Statistical Area 630 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 4, 2012.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2012.

Steve Thur,

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

[FR Doc. 2012–7046 Filed 3–20–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 57
Friday, March 23, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS–LS–11–0049]

Livestock Mandatory Reporting Program; Establishment of the Reporting Regulation for Wholesale Pork

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture, Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). In October 2006, the LMR program was reauthorized by Congress through September 2010. On September 28, 2010, the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. This proposed rule reflects the work of the USDA Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee).

DATES: Written comments must be received by May 22, 2012. Written comments on the information collection and recordkeeping provisions of this proposed rule must be received by May 22, 2012.

ADDRESSES: Comments should be submitted electronically at *http://www.regulations.gov.* Comments may also be sent to Michael Lynch, Director; USDA, AMS, LS, LGMN Division; 1400 Independence Ave. SW., Room 2619–S; Washington, DC 20250; Telephone number (202) 720–6231; or Fax (202) 690–3732.

Comments should reference docket number AMS–LS–11–0049 and note the date and page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at *http://www.regulations.gov,* or during regular business hours at the above address. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; USDA, AMS, LS, LGMN Division; 1400 Independence Ave. SW., Room 2619–S; Washington, DC 20250; at (202) 720–6231; fax (202) 690–3732, or email *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The 1999 Act was enacted into law on October 22, 1999 (Pub. L. 106–78) as an amendment to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627, 1635–1638d). The purpose of the 1999 Act was to establish a program of information regarding the marketing of cattle, swine, lambs, and the products of such livestock that provides information that can be readily understood by producers; improves the price and supply reporting services of USDA; and encourages competition in the marketplace for livestock and livestock products. On December 1, 2000, AMS published the final rule to implement the LMR program as required by the 1999 Act (65 FR 75464) with an effective date of January 30, 2001. This effective date was subsequently delayed until April 2, 2001 (66 FR 8151).

The statutory authority for the program lapsed on September 30, 2005. At that time, AMS sent letters to all packers required to report under the 1999 Act requesting they continue to submit information voluntarily. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization (2006 Reauthorization Act) (Pub. L. 109–296). The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of the LMR program through September 30, 2010, and separated the reporting requirements for sows and boars from barrows and gilts, among other changes. On May 16, 2008, USDA published the final rule to re-establish and revise the LMR program (73 FR 28606). The rule incorporated the swine reporting changes contained within the 2006 Reauthorization Act, as well as enhanced the program's overall effectiveness and efficiency based on AMS's experience in the administration of the program. The LMR final rule became effective on July 15, 2008.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) directed the Secretary of Agriculture (Secretary) to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The report from this study concluded that voluntary negotiated wholesale pork price reporting is thin, and becoming thinner. It also found some degree of support for moving to mandatory price reporting at every segment of the industry interviewed, and that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork. The report was delivered to Congress on March 25, 2010. A copy of the full report is available on the AMS Web site at *http://www.ams.usda.gov/AMSv1.0/marketnews* by clicking on ''Livestock, Meats, Grain, and Hay,'' then ''Livestock Mandatory Reporting.''

On September 28, 2010, the 2010 Reauthorization Act (Pub. L. 111–239), reauthorized LMR for an additional 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting and establish a negotiated rulemaking committee to develop these changes. The statute

required that the committee include representatives from (i) organizations representing swine producers; (ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork; (iii) the Department of Agriculture; and (iv) interested parties that participate in swine or pork production.

Further, the 2010 Reauthorization Act stated that any negotiated rulemaking committee established by the Secretary would not be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Purpose of Regulatory Action

The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these proposed regulations, as described in detail in the background section. Further, a mandatory wholesale pork reporting program will address concerns relative to the asymmetric availability of market information. Pork processors are not currently required by law to report wholesale pork cut prices. Rather, AMS collects information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that wholesale pork price reporting is thin, and results in frequent missing or unreportable price quotes for subprimals.

This proposal is done in accordance with the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111–239], which reauthorized Livestock Mandatory Reporting for 5 years and required the addition of wholesale pork through negotiated rulemaking.

Summary of the Major Provisions of the Regulatory Action in Question

This proposed rule requires packers to report wholesale pork sales to AMS. Specifically, the proposed rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will be required to submit the price of each sale, quantity, and other characteristics (e.g., type of sale, item description, destination) that AMS will use to produce timely, meaningful market reports.

Costs and Benefits

The benefits of this proposed rule are diffuse and difficult to quantify, therefore, this analysis considers benefits only on a qualitative basis. The qualitative benefits derived from the literature and are:

1. The increased number of firms reporting prices to AMS under the mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;

2. Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and

3. Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small wholesalers and retailers, and direct and niche marketing operations.

The major cost of complying with this rule involves the information collection and reporting process. The regulatory objective of this proposed rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The Committee developed the proposed rule to achieve this objective in the most cost-effective manner possible. To the extent practicable, the Committee drew upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

Annual industry costs are expected to be $95,770. These represent start-up costs associated with information technology enhancements, recordkeeping, and submission costs. The annual cost for each of the 56 respondents is estimated to be $1,710. Total annual cost to the government is expected to be approximately $300,000. This is largely for salaries and benefits for personnel who will collect, review, assemble, and publish market reports on wholesale pork. Additional costs of approximately $325,000 will be incurred in the first year to accommodate information technology system development. A complete discussion of the cost and benefits can be found under the discussion of Executive Order 12866.

Negotiated Rulemaking Committee

Negotiated rulemaking is a procedure authorized by the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561–570) in which a proposed rule is developed by a committee composed of people representing interests that will be significantly affected by the rule, and the rulemaking agency. Experience of various Federal agencies in negotiated rulemaking demonstrated that using a trained neutral party to facilitate the process assists parties during negotiations in identifying their real interests, evaluating their positions, communicating effectively, and reaching consensus where possible. AMS engaged the Federal Conciliation and Mediation Service—a government agency providing mediation, arbitration, negotiation, and related services for government agencies and industry—for this purpose.

On November 24, 2010, AMS published a notice announcing its intent to convene a negotiated rulemaking committee (75 FR 71568). The notice sought public comment on the need for the committee and on its proposed membership, and provided others interested in being committee members the opportunity to submit nominations. AMS proposed a number of organizations for membership on the committee that represented those interests required to be included on such a committee by the 2010 Reauthorization Act.

Additionally, AMS solicited nominations from affected organizations who also wanted to be represented on the committee. In determining membership, AMS considered whether the interest represented by a member will be affected significantly by the final product of the committee and whether that interest was already adequately represented by other members. Under section 562(5) of the NRA, ''interest'' means ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' In accordance with the NRA, committee membership was limited to a maximum of 25 members.

On January 26, 2011, AMS announced the establishment of the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee); responded to comments from the November 24, 2010, notice; identified the final list of members; and set forth the dates for the first meeting (76 FR 4554).The Committee members were:

American Meat Institute;
Chicago Mercantile Exchange;
Food Marketing Institute;

Grocery Manufacturers Association;
Livestock Marketing Information Center;
National Farmers Union;
National Livestock Producers Association;
National Meat Association;
National Pork Producers Council;
North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (1 combined representative for all three per organizations' request);
United Food and Commercial Workers Union; and
USDA, Agricultural Marketing Service.

On February 8–10, 2011, the Committee met in St. Louis, Missouri. Notably, during this meeting, the Committee members developed ground rules that addressed general rules of conduct, participation, and reiterated the Committee's purpose. The ground rules also established that all decisions would be made by ''consensus,'' and defined ''consensus'' as unanimous concurrence among the Committee members. The Committee held second (76 FR 12887) and third (76 FR 23513) meetings in Arlington, Virginia; March 15–17, 2011, and May 10–11, 2011, respectively.

All meetings were open to the public without advance registration. Members of the public were given opportunities to make statements during the meetings at the discretion of the Committee, and were able to file written statements with the Committee for its consideration. Meeting minutes from all Committee proceedings and supporting materials can be found at *www.ams.usda.gov/NegotiatedRulemaking.*

Proposed Requirements

As previously discussed, the Committee was tasked with negotiating and developing a proposed rule to implement mandatory reporting of wholesale pork. In doing so, the Committee determined what characteristics describing sales of wholesale pork should be reported to AMS to allow the promulgation of meaningful, timely reports. These requirements are discussed in detail in the sections immediately following and represent the information on price, volume, and related characteristics of wholesale pork sales that packers will be required to submit under LMR.

According to the LMR program (7 CFR part 59), a packer, for purposes of swine and wholesale pork reporting, is defined as any person engaged in the business of buying swine in commerce for the purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats of meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only federally inspected swine processing facilities that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

For the ease of the reader, this section is organized by topic andhighlights discussion for the proposed changes as considered by the Committee.

Definition of Wholesale Pork

The term ''wholesale pork'' presented in this proposed rule reflects only product that the Committee feels adequately represents the wholesale market. The Committee carefully considered the inclusion, or exclusion, of items that would not represent what is widely considered wholesale pork to packers, processors, retailers, and others in the supply chain. For example, it was determined that items with commonly-added ingredients used to extend shelf life, such as a salt or sodium phosphate solution, would be included. However, items that are flavored (e.g., teriyaki pork tenderloins, seasoned ribs, lemon pepper sirloin roasts) would not be considered wholesale pork and would therefore be excluded from LMR reporting requirements. The Committee also discussed whether or not variety meats and offal should be included in the proposed definition of wholesale pork. It was determined that offal (e.g., heart, kidney) would not be considered wholesale pork; whereas processing floor variety meats that are harvested from the chilled carcass—such as neck bones, tails, skins, feet, hocks, jowls, and backfat—would be considered wholesale pork and would be reported. Committee consensus on the definition of wholesale pork requires variety meats to be reported, and refers to a separate new definition for variety meats as proposed herein. Definitions for wholesale pork and variety meats appear in the proposed revisions to section 59.200.

Reporting Times

The Committee discussed daily reporting times and reached consensus on twice a day (by 10 a.m. and 2 p.m. Central Time) for barrow and gilt product and once per day (by 2 p.m. Central Time) for sow and boar product. These reporting times are outlined in proposed new section 59.205, and are consistent with reporting times for other commodities covered under LMR. For sow and boar plants, the Committee agreed that reporting once per day was practical. Separation of the reporting requirements for sow and boar product is being proposed to minimize the reporting burden on sow and boar packers where possible and to make the information published for sow and boar products more meaningful to the industry. As a general rule, these plants slaughter fewer animals than their counterparts who primarily slaughter barrows and gilts, and would therefore have a lower number of reportable transactions. Further, publishing sow/boar product information twice daily would provide little benefit in terms of added market transparency, as prices in this sector of the market fluctuate less than in the barrow/gilt market. Many of the plants producing this type of product would be smaller in nature and it would be unnecessarily burdensome to require twice daily reporting. The Committee agreed that reporting this type of product once per day meets the industry's needs.

Price Reporting Basis

Over the course of the three meetings, price reporting basis generated significant discussion by the Committee. There was Committee discussion regarding two different reporting methods that could be proposed for pork mandatory reporting: Free-on-Board (F.O.B.) Omaha basis, which was used for the voluntary program, and F.O.B. Plant basis, which is currently used for mandatory reporting of boxed beef and lamb. Committee members who indicated a preference for reporting F.O.B. Plant basis stated that reporting prices on this basis would reflect the actual transaction that occurred within the marketplace without additional adjustments for a centralized reporting location. Further, there was concern expressed that reporting swine purchases on a plant delivered basis (as is currently the case under LMR for swine) and pork on an F.O.B. Omaha basis would make data comparison difficult. Committee members who indicated a preference for reporting prices on an F.O.B. Omaha basis cited the desire for consistency with current

practice, among other factors. During the final meeting, the Committee reached consensus that prices would be reported on both an F.O.B. Omaha basis and F.O.B. Plant basis.

The Committee agreed that F.O.B. Omaha basis will be calculated using freight information provided by AMS. While this information is not intended for inclusion in the regulations, AMS is outlining its plan to assist reporting entities. The Committee believed that this requirement for all packers to utilize the same conversion methodology provides greater consistency with these reported prices, and is conducive to the audit process implicit with LMR. As reflected in the draft regulatory language, AMS will develop freight adjustment information for use in developing F.O.B. Omaha prices. AMS considered two options in developing this information to derive F.O.B. Omaha prices—a freight map with concentric zones that reflect different freight adjustments based on a shipping destination's distance from Omaha and a per loaded mile freight rate. A zone map could prove to be difficult for reporting entities to comply with as it would not be practical to display every U.S. city, nor to expect reporting entities to know which cities belong in which zones. AMS believes a simpler option is to establish a per loaded mile freight rate that packers could apply. For example, to determine the F.O.B. Omaha price for a load of pork loins shipped to Phoenix, Arizona, the packer would figure the distance from Omaha to Phoenix and multiply that distance by the per loaded mile rate, which would then be divided by the total hundredweight of the product being shipped. This resulting freight expense would be deducted from the actual delivered price per hundredweight to reflect the FOB Omaha price to be submitted to AMS. AMS also believes this method would be easier for reporting packers to comply with and document for audit purposes. Based on information gathered from various sources on transportation costs, AMS believes that, if the freight rate would be applied today, that per loaded mile rate would be $2.11. Once the final rule is in place, AMS would reevaluate the per loaded mile rate on a quarterly basis.

The Committee considered other price-determining characteristics as they relate to the reporting requirements of LMR. For example, the Committee reached consensus that the price reported to AMS shall include any applicable brokerage fees, but should not include any direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs). Removing these types of additional costs provides AMS a more homogeneous price for reporting purposes. Furthermore, the Committee agreed that it would be overly burdensome on reporting entities and provide little utility for market reports to include costs for things such as accruals or rebates as many of these costs are not known at the time of transaction. The requirements for reporting prices of wholesale pork sales are outlined in proposed section 59.205.

Product Characteristics

The Committee reached consensus on the type of information packers will report to AMS as part of mandatory wholesale pork reporting. These items are discussed below and are outlined in the proposed section 59.205.

Type of Sale. Committee members reached consensus on the types of sales of wholesale pork that must be reported. The Committee identified and defined three types of sale: negotiated, forward, and formula marketing arrangement. When packers report sales of wholesale pork to AMS, they will be identified using one of these three categories. For negotiated sale, the Committee desired to capture the traditional ''spot'' market, and therefore crafted a proposed definition that sets delivery parameters for both boxed product (within 14 days of the date of agreement) and combo product (within 10 days of the date of agreement). Additionally, there was discussion regarding which day would be considered ''Day 1'' for reporting purposes. It was agreed by the Committee that the day after the seller-buyer agreement shall be considered ''Day 1'' for reporting delivery periods to ensure consistency with current industry practices.

For the definition of a forward sale, the Committee desired to establish these types of transactions as occurring outside the traditional negotiated, or spot, window. Therefore, the Committee agreed that the proposed definition for forward sale means an agreement for the sale of pork where the delivery is beyond the timeframe of a negotiated sale and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement. The Committee also agreed that the definition proposed for formula marketing arrangement bases the price paid not on seller-buyer interaction and agreement on a given day, but instead is established in reference to publicly-available quoted prices. The proposed definitions for the terms ''Type of sale,'' ''Negotiated sale,'' ''Forward sale,'' and ''Formula marketing agreement'' appear in proposed section 59.200.

Specifications. The Committee discussed the options for submitting data to AMS on cuts of pork according to Institutional Meat Purchase Specifications (IMPS), as is commonly used with mandatory boxed beef trade. It was decided that IMPS are not widely used in the wholesale pork trade, and therefore, would not be good descriptors of product specifications. Instead, the Committee decided that a description of the specifications of each pork item being transacted (e.g., vacuum-packed ¼ inch loins) would be submitted to AMS and then the agency would group like products together for the purpose of publishing reports. The item's specification would also contain weight ranges for the product. Characteristics that entities would be required to report are outlined in proposed section 59.205 (a)(1).

The Committee also discussed whether or not to include a provision in the proposed rule that requires packers to submit product yield data to AMS. It was discussed in Committee meetings that this information was needed to calculate the daily pork carcass cutout. The pork carcass cutout is an estimate of the value of a hog carcass based upon current wholesale prices for sub-primal pork cuts reported to AMS. The cutout provides an indication of the overall supply and demand situation of the wholesale pork cuts market. A composite value is calculated each day for the various pork primals and these values are aggregated to reflect a single composite value of a pork carcass. These cuts reflect a standard cutting specification and must be traded on a negotiated basis to deliver within 10 working days of the time of sale for combo items (processing cuts) and 14 working days for boxed items (retail cuts). It was decided by the Committee that packers would provide the necessary product yield information voluntarily to AMS upon request and, therefore, was not included in the Committee's proposed rule.

Product Delivery Period. Under the existing voluntary pork reporting program, the delivery period for negotiated pork trades is measured in working days rather than calendar days. It was decided by the Committee that the product delivery period should be reported in calendar days to be consistent with the requirements for boxed beef and boxed lamb. This reportable characteristic is outlined in proposed section 59.205 (a)(1).

Pork class. The Committee considered the categories of pork class, which describes the type of swine from which the product was derived, and reached consensus that there should be three categories for reporting product: barrow/gilt, sow, and boar. This reportable characteristic is outlined in proposed section 59.205 (a)(1). Further, a proposed definition for ''pork class''appears insection 59.200.

Destination. The Committee agreed to add ''Destination'' as a characteristic of each sale and discussed how to report export product, especially if the report's primary objective is to capture sales within the United States. It was agreed that packers would report products' destination in one of three categories: Domestic, Export overseas, or North American Free Trade Agreement (NAFTA).

Refrigeration. Consensus was reached by the Committee that a product's refrigeration type should be reported to AMS to be used as a means for distinguishing fresh product transactions that may be discounted or priced differently due to age of the product. Splitting the fresh category into two product age groups would provide a means for identifying product that may be discounted due to potential shelf life limitations. The Committee determined that ''Day 1'' should be considered the day after production. The form contained in Appendix A provides timeframes against which packers should report product refrigeration.

Specialty Pork Products. The Committee included a reporting category for specialty pork products in order to capture trade of wholesale pork that is produced or marketed under any specialty program, such as genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics. It was noted by the Committee that AMS publishes similar information reported under the boxed beef program for ''branded'' programs. It was agreed by the Committee that a trademark brand on a product would not by itself make the product a specialty pork product, as outlined in the proposed definition in section 59.200.

General Provisions

As discussed, the Committee developed proposed changes to 7 CFR part 59, Livestock Mandatory Reporting, to incorporate wholesale pork into LMR. Subpart A of part 59, General Provisions, addresses requirements pertinent to all aspects of mandatory reporting. Some changes are necessary to fully incorporate wholesale pork into Subpart A, and are largely administrative in nature. These conforming changes, as they appear in the proposed regulatory text, were presented by AMS and adopted by the Committee. Some sections in Subpart A remain unchanged, but are discussed here to provide context for the reader.

Section 59.10 details how packers would be required to report information and how reporting will be handled over weekends and holidays. The information will be reported to AMS by electronic means. Electronic reporting involves the transfer of data from a packer's electronic record keeping system to a centrally located AMS electronic database. The packer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS. Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports which will be released according to the daily and weekly time schedule set forth in these regulations. Information regarding the specific characteristics of each reported sale must be supplied by lot without aggregation. No changes are proposed for section 59.10 to accommodate the additional requirement of reporting wholesale pork cuts.

This proposed rule requires the reporting of specific market information regarding the sales of wholesale pork products.

Section 59.20 is proposed to be amended by the addition of (f), *Reporting Sales of Wholesale Pork.* In addition to the aforementioned reporting requirements, packers would be required to maintain a record to indicate the time a unit of wholesale pork cuts was sold, as occurring either before 10 a.m. central time, between 10 a.m. and 2 p.m. central time, or after 2 p.m. central time. To allow packers time to collect, assemble, and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times are to be reported.

Further, section 59.20 identifies the recordkeeping requirements imposed by the 1999 Act and regulations on reporting entities. Reporting packers are required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products. In addition, they are required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned paperwork must be maintained for at least 2 years and must be made available to employees or agents of USDA for routine compliance audits, as well as for investigations involving suspected noncompliance or potential violations. More information regarding compliance and review procedures can be found in the LMR Information section of the Livestock and Grain Market News Web site at *http://marketnews.usda.gov/portal/lg.*

Lastly, under Subpart A, section 59.30 details the general definitions of terms used throughout the regulations and applicable to all subparts. Where definitions apply to only one reportable commodity, those are included in the appropriate subpart. For example, definitions that pertain only to swine and swine products are contained in Subpart C and are proposed herein accordingly. The majority of definitions in section 59.30 remain unchanged from those that were published in the 2008 final rule. Changes to section 59.30 as a result of the addition of wholesale pork are found in the definitions for the terms ''F.O.B.'' and ''Lot.'' The change to F.O.B. is proposed to reflect the Committee's desire to have prices reported on both a plant and Omaha basis. The proposed change to the term ''Lot'' adds wholesale pork. There is also an administrative change proposed to the definition of IMPS to update a Web site address and phone number.

Other Provisions

The 1999 Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and list the conditions under which Federal employees can release such information. While none of these provisions were amended by the 2010 Reauthorization Act or were proposed for amendment by the Committee, they are presented here for information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical. The 1999 Act provides for what constitutes violations of that Act, such as failure to report the required information on time or failure to report accurate information.

The section on enforcement establishes a civil penalty of $10,000 for each violation and provides for the Secretary's issuance of cease and desist

orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, and issuance of an injunction or restraining order. The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program. The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported. Also, the 1999 Act provides that reporting entities will not be required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Committee Recommendations

As noted, the Committee's work focused on developing regulatory text to implement mandatory wholesale pork reporting under the LMR program. The Committee also developed several recommendations that, while outside their statutory purview, warrant discussion here. The Committee recommended that AMS implement a transition period that would continue voluntary reporting methodology until 12 months after the commencement of mandatory reporting; allow for a 12 month beta testing period for the new mandatory system; and release mandatory data publicly each Monday for the previous week. The Committee asserts that this would minimize market disruption.

Based on these recommendations, AMS plans to transition from a voluntary program to a mandatory program by publishing ''dual'' reports for 6 months. That is, for a period of time, AMS will publish reports reflecting information collected under a voluntary reporting system and reports reflecting information collected under a mandatory reporting system for wholesale pork. If AMS determines that the information collected under a voluntary program becomes of little utility before the 6-month mark or if sufficient AMS resources are not available, it will cease collecting and publishing this information. On the contrary, if at the end of the 6-month period any problems still exist with the collection or publication of data, or if the cessation of dual reports would unnecessarily cause market disruption, AMS will consult with the industry to determine an appropriate course of action. In that instance, AMS would consider extending the dual reporting period until a full 12 month period has occurred. Further, during the transition period, AMS intends to publish reports reflecting information collected under the mandatory program on a delay and will consider the Committee's recommendation regarding the appropriate time to release such reports.

In regards to testing of the information technology systems, AMS understands that affected entities (*i.e.,* packers) will not effectively be able to make enhancements to their reporting systems until the requirements are known, that is, until then final rule is published. AMS will work with packers to ensure that an appropriate amount of time is allowed for development and testing of systems necessary to submit the required data.

It should also be noted that many of the Committee's recommendations, which can be found at *www.ams.usda.gov/negotiatedrulemaking,* are contained in the proposed regulatory text.

OMB Control Numbers

Subpart E of part 59 covers the OMB control number 0581–0186 assigned pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35) for the information collection requirements listed in Subparts B through D of part 59. All required information must bereported to AMS in a standardized format. The standardized form is embodied in the data collection form that is contained in Appendix A and described in Appendix B at the end of this document.

For reporting wholesale pork information, swine packers will utilize one form (Appendix A). This additional reporting requirement does not impact the reporting requirement that packers may have for other reportable commodities, such as swine.

Appendices

The final section of this document contains two appendices. These appendices will not appear in the Code of Federal Regulations. Appendix B describes the form that will be used by those required to report information under this program. The actual form is contained in Appendix A.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 2010 Reauthorization Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181–229); administer, enforce, or collect voluntary reports under the 1999 Act, the 2006 Reauthorization Act, or any other law; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 41–58). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to this regulation. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision. This rule is required by the 1999 Act. Section 259 of the 1999 Act, federal preemption, states, ''In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of

information, or the publication of such information, on the prices and quantities of livestock or livestock products.''

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. However, since the nationalLMR program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no Federalism implications associated with this rulemaking.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This proposed rule would amend the LMR regulations to implement mandatory wholesale pork reporting and was developed by the Committee, comprising organizations representing pork packers, processors, retailers, and buyers of wholesale pork; swine producers; USDA; and other interested parties.

Alternatives to the proposed language were thoroughly discussed during the course of the negotiated rulemaking meetings, and the consensus language reflects the best efforts of all participating parties to ensure the successful implementation of wholesale pork reporting. These alternatives are reviewed in detail in the ''Proposed Requirements'' section of this preamble.

Since all of the entities who will be required to report wholesale pork sales already report information under LMR regarding their swine purchases, costs to reporting another commodity are expected to be minimal. A complete analysis of the number of affected entities and the required volume of reporting is discussed under the Paperwork Reduction Act (PRA) section following this section.

Currently, pork processors are not required by law to report wholesale pork cut prices. Rather, AMS collects information on daily sales and price information from pork processors on a voluntary basis. The 2008 Farm Bill directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The study found that voluntary wholesale pork price reporting is thin, and results in frequent missing or unreportable price quotes for subprimals. The number of missing data has increased over time.

In addition, changes in the way pork is traded in recent years have led to inconsistencies in industry practices and current AMS guidelines for defining reportable trades. The study found that more pork is being: (1) Traded in forms that are either not reported or not reportable (e.g., enhanced product, case ready product, branded product, or frozen product); (2) transacted through intra-firm transfer, through inter-firm transfer, through formula pricing, through forward price contracts well in advance of delivery (beyond 7 or 10 days forward as used by AMS); and (3) destined for export markets which are excluded from AMS pork price reports for the negotiated cash guidelines used by AMS.

As a result of thin pork price reporting, industry participants have raised concerns about potential selective price reporting in the voluntary program. These concerns have reduced the perceived value of published price reports to the industry. The study found support for mandatory price reporting throughout the industry, and concluded that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork.

The benefits of this proposed rule are diffuse and difficult to quantify, therefore, this analysis considers benefits only on a qualitative basis. A complete discussion of the benefits is found in the summary of benefits section. The major cost of complying with this rule involves the information collection and reporting process. The information collection and reporting process is explained in the Summary of Costs section and is referenced in section 59.10(f), Reporting Methods. A complete discussion of the cost analysis can be found in the summary of costs section.

Summary of Benefits. Government intervention in a market is conducted because the free market has tendencies to fail whenever certain criteria hold. Market failures occur in cases such as public goods, externalities, and asymmetric and/or missing information problems appear. Agricultural markets in particular are subject to information asymmetry, with both large and small operators in every aspect of the value chain, ranging from multinational corporations to part-time operators. Agricultural markets are also characterized by a large degree of uncertainty and missing information.

In 2001, George Akerloff, Michael Spence, and Joseph Stiglitz [1] won the Nobel Prize in Economics for their seminal work on the Economics of Information, establishing it as a field within economics. Their combined works showed that: (1) Even small gaps in information can cause a misallocation of resources; (2) attempts to gather information by market participants generally incur costs that may not be recouped; (3) participants may turn to the use of nonmarket ''signaling'' to gather information, rather than the price mechanism; (4) attempts to obtain information by the participants may themselves cause sufficient levels of distortion in the markets, even with small information costs; and (5) the existence of other market failures can alter the individual's valuation of the benefits and costs of information.[2] Each of these situations can lead to either a failure to attain an efficient equilibrium, or may lead to multiple equilibriums, both of which reduce economic welfare. Failure to achieve an equilibrium outcome can result in the failure of supply and demand to intersect at an equilibrium point, with persistent surpluses or shortages in the market.

The wholesale pork reporting study mandated by Congress found evidence consistent with Akerloff, *et al.,* and

[1] ''The SverigesRiksbank Prize in Economic Sciences in Memory of Alfred Nobel 2001.'' *Nobelprize.org.* 7 Sep 2011 available at *http://www.nobelprize.org/nobel_prizes/economics/laureates/2001/.*

[2] Stiglitz, J.E. ''The Contributions of the Economics of Information to Twentieth Century Economics.'' 2000. The Quarterly Journal of Economics 115(November):1441–1478.

indicates that mandatory price reporting will improve information in the wholesale pork market. Following the results of Akerloff, *et al.* cited above, this report found that: (1) The wholesale pork reporting information under the voluntary program is thin, getting thinner, and does not properly reflect changes in the pork market in recent years. Mandatory reporting would improve this situation by increasing the number of reporting firms, including sow/boar meat in the reporting, responding to changes in the marketing of pork and pork products, and reducing the number of missing price quotes, particularly for subprimals; (2) Data users will have improved information without incurring additional costs such as private market analyses and data subscriptions, which may be too costly for small producers, small packers, small processors, and other data users; (3) Mandatory price reporting will lead to increased transparency in prices and more efficient price discovery. In addition, price data will be more consistent with current trade practices, providing more clear-cut market information, and less need for ''signaling;'' (4) Mandatory wholesale pork price reporting will reduce concerns the industry now has about selective price reporting, which can potentially distort market information; and (5) Mandatory wholesale pork price reporting will benefit small market participants to a greater extent than larger participants, who are likely to have more information available to them than the smaller participants, although larger firms with more staff may have greater ability to analyze the data than small firms. The report concluded that mandatory wholesale pork reporting would reduce the inequities in market information and create a more competitive environment.

These findings indicate that mandatory price reporting will be an improvement over the current voluntary program, and that market efficiency as well as overall economic welfare will be increased by implementing the mandatory price reporting program for pork and pork products. Research on existing mandatory livestock price reporting also supports this conclusion.

Early research on problems associated with pricing in livestock markets often considered the distinction between price determination and price discovery, and the resulting issues faced by livestock producers in a particular market. Ward and Schroeder (2009) [3] describe the difference between price determination and price discovery by noting that price determination is the interaction of supply and demand factors in a broad market situation to determine the general price level. Price discovery is the process whereby buyers and sellers interact in a specific market at a specific time to ascertain the value of a commodity in that market at that time. Price discovery involves the consideration of multiple factors, including market structure, futures prices and risk management options. However, the first consideration in price discovery is typically the general market price level, *i.e.* price determination is the starting point for price discovery.

The importance of price reporting by AMS is that it provides data that gives market participants knowledge of the general price levels of a commodity, as well as insight into the overall conditions in that market. This information assists participants in more effectively discovering prices in their specific market.

Research on livestock mandatory pricing has demonstrated that mandatory pricing does increase transparency and improves the efficiency of the price discovery process. Ward (2004a and b) [4] found that mandatory price reporting increased information, showing mandatory reports significantly improved the amount, type, and timeliness of data related to captive supplies, and increasing transparency. USDA's Economic Research Service (ERS) (Perry, MacDonald, Nelson, Hahn, Arnade and Plato, 2005) [5] extended Ward's work, yielding similar results. ERS also found that prices were twice as volatile under the mandatory system than under the voluntary system. The reason was thought to be the filtering or interpretive role of market reporters under voluntary reporting relative to the reduced filtering role with mandatory reporting.

Koontz (2007) [6] studied the vertical relationship between the national fed cattle price and boxed beef cutout values using a standard price transmission models. He found boxed beef cutout values had both a greater and quicker impact on fed cattle than before the mandatory program. However, he also detected more uncertainty. This supports earlier research indicating both increased transparency and increased volatility associated with mandatory reporting. In addition, Lee, Ward and Brorsen (2011) [7] examined the role of cash prices in price discovery for fed cattle and hogs as cash market share fell over the years of 2001–2010. They found that the cash market remains important for price discovery, although thinning of the cash market has had a negative impact on the process.

As the wholesale pork study indicated, there are some market participants who are likely to benefit more than others. Niche and direct marketing producers are likely to benefit from improved data, as they are less likely to be able to have other means of price determination available to them, primarily due to cost. These producers account for a small but growing segment of U.S. agriculture.

In summary, research on existing livestock mandatory price reporting has demonstrated that it has improved transparency issues in livestock markets, enabling more efficient and effective price discovery in these markets, although there has been increased variability in reported prices, largely due to the change in approach from voluntary to mandatory. This improved transparency and increased efficiency is consistent with economic theory of information. The wholesale pork reporting study mandated by Congress shows evidence that mandatory reporting will have a similar impact on the wholesale pork market.

For the economic analysis of the rule, AMS was unable to determine a quantitative assessment of the benefits due to limitations on existing research and the disparate nature of the benefits to be achieved. The qualitative benefits derived from the literature and are:

4. The increased number of firms reporting prices to AMS under the mandatory program will provide a more complete data set, leading to increased price transparency and more efficient price discovery;

5. Allows AMS more opportunity to keep wholesale pork reporting current with industry marketing practices and product offerings; and

[3] Ward, C.E. and T.C. Schroeder.''Understanding Livestock Pricing Issues.'' Oklahoma Cooperative Extension Fact Sheet, AGEC–551 August 2009.

[4] Ward, C.E. ''Captive Supply Trends since Mandatory Price Reporting.'' Oklahoma Cooperative Extension Fact Sheet F–597, November 2004a.Ward, C.E. ''Captive Supply Price Relationships and Impacts.'' Oklahoma Cooperative Extension Fact Sheet F–598, November 2004b.

[5] Perry, J., J. McDonald, K. Nelson, W. Hahn, C. Arnade, and G. Plato. 2005. ''Did the Mandatory Requirement Aid the Market? Impact of the Livestock Mandatory Reporting Act.'' United States Department of Agriculture, Economic Research Service, LDP–M–135–01.

[6] Koontz, S.R. ''Impacts of Mandatory Price Reporting on the Relationship Between Fed Cattle Prices and the USDA Boxed Beef Cutout Value.'' 2007. Working Paper, Department of Agricultural and Resource Economics, Colorado State University.

[7] Lee Y., Ward, C.E. and Brorsen, B.W. 2011. ''Cash Market Importance in Price Discovery for Fed Cattles and Hogs.'' Division of Agricultural Science and Natural Resources, Oklahoma Agricultural Experiment Station, Oklahoma State University.

6. Provides information to industry participants that cannot afford to purchase data, including small pork processing operations, small wholesalers and retailers, and direct and niche marketing operations.

Summary of Costs. The regulatory objective of this proposed rule is to increase the amount of information available to participants in the marketplace for wholesale pork and pork products by mandating reporting of market information by certain members of the industry. The Committee developed the proposed rule to achieve this objective in the most cost-effective manner possible. To the extent practicable, the Committee drew upon current industry practices and reporting procedures for other commodities covered by LMR in order to minimize the burden to the industry.

The least cost reporting method to accomplish the objectives of the rule continues to be the transfer of electronic data from the reporting entity to AMS, as is the current practice with mandatory price reporting for other covered commodities. Electronic data transmission of information is accomplished using an interface with an existing electronic record keeping system. Packers will provide for the translation of the information from their existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information will be electronically transmitted to AMS where it will be automatically loaded into an AMS database. We estimate that the creation of this interface by in-house computer personnel will require an industry average of 15 hours per respondent. Further, we estimate the cost per hour for labor to average $49.30 (Bureau of Labor Statistics),[8] for a total cost, on average, of $740. Those companies not having in-house computer personnel will incur such costs as are necessary to bring in outside computer programmers to accomplish the task.

INITIAL ELECTRONIC STARTUP COST PER RESPONDENT

Hours to develop interface	15
Labor cost per hour	× $49.30
Total cost per respondent	739.50

INITIAL ELECTRONIC STARTUP COST PER RESPONDENT—Continued

Startup Cost Prorated over 3 Year Life of Program: $739.50/3 = $246.50 annual cost per respondent.	

Additionally, AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $116.10 (5 hours for recordkeeping at $23.22).

In this rule, information collection requirements include submission of the required information on a daily basis in the standard format provided in the Wholesale Pork Daily Report (LS–89). A copy of this report is included in Appendices at the end of this rule.There are expected to be a total of 56 respondents (34 commodity pork processors, 12 sow and boar meat processors, and 10 processors of all types of meat). Plants that slaughter both commodity pork (from barrows and gilts), and sow/boar meat will file one combined report so that the maximum number of reports per day is two.

ANNUAL SUBMISSION COSTS PER RESPONDENT

Type of product	Number of respondents	Cost per respondent	Total cost
Commodity Pork	34	$1,509.30	$51,316.20
Sow/Boar Meat	12	754.65	9,055.80
Combination Meat Types	10	1,509.30	15,093.00
	56		
Total Annual Submission Costs			75,465.00

By dividing total submission costs of $75,465.00 over the total number of respondents (56) yield an average submission cost of $1,347.59 on an annual basis. This value can be used to estimate the total cost burden to the industry, which is determined to be $95,770.64 per year.

ANNUAL INDUSTRY COSTS

	Cost per respondent	Number of respondents	Total cost to industry
Start-up Costs	$246.50	56	$13,804.00
Recordkeeping	116.10	56	6,501.60
Average Submission Costs	1,347.59	56	75,465.04
Total Annual Costs	1,710.19	56	95,770.64

In 2010, federally inspected pork production was 22.274 billion pounds. Assuming this level of production, the cost of this proposed rule to the private sector is $4.30 per million pounds ($95,770.64/22.274 billion pounds).

In addition to these costs to packers for submitting information, AMS will reallocate staff, issue regulations, and set up an electronic database to capture data and develop reports. The 3 staff years required to administer and produce mandatory price reports include reporters and auditors. Salary-related costs in each year are estimated at $271,000. Other costs include approximately $20,000 for travel/transportation, training, and outreach;

[8] *http://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

$5,000 for miscellaneous costs such as printing, training, office supplies, and equipment; and $325,000 in the first year for a computer systems contract to develop the database required to manage the data.

The mandatory price reporting program would cost AMS $621,161 in the first year of implementation, and subsequent year costs are estimated to be $296,161. Therefore, the costs would be roughly $404,500 per year.

TOTAL ANNUAL COST TO GOVERNMENT

Cost type	First year costs	Following years' costs	Average cost/year
Salaries	$271,160.82	$271,160.82	$271,160.82
System Development Contract	325,000.00	.....	108,333.33
Travel (20 trips @$1,000/trip)	20,000.00	20,000.00	20,000.00
Miscellaneous	5,000.00	5,000.00	5,000.00
Total Costs	621,160.82	296,160.82	404,494.15

Adding the costs to industry together with the costs to government, yields the total cost to society associated with this regulation. Because benefits could not be quantified, comparison of costs with benefits is not possible. However, total costs, shown annually, over the life of the rule, and discounted over the life of the rule have been calculated. These figures show that this rule does not meet the threshold for an economically significant rule ($100 million).

TOTAL COSTS OF REGULATION

Annual Costs	$500,277.52
Total Costs over 3 Years	1,500,832.56
Discounted Costs over 3 Years (3% rate)	1,457,543.39
Discounted Costs over 3 Years (7% rate)	1,404,788.36

Regulatory Flexibility Act

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, were evaluated by the Committee. Moreover, the requirements contained in this proposed rule were negotiated with members of the industry, some of whom represented small- and mid-size firms.

Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The 1999 Act requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the 1999 Act and by these regulations and exists nowhere else. Therefore, this proposed rule does not duplicate market information reasonably accessible to USDA.

For any calendar year, any federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years, and any packing firm that slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years, are required to report information. Additionally, any swine plant that did not slaughter swine during the immediately preceding 5 calendar years is required to report if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant. This accounts for approximately 56 out of 611 swine plants or 9.2 percent of all federally inspected swine plants. Fully 90.8 percent of all swine plants in the U.S. are exempted by this rule from reporting information.

Accordingly, we also have prepared this initial regulatory flexibility analysis. The RFA compares the size of meat packing plants to the North American Industry Classification System (NAICS) to determine the percentage of small businesses within the meat packing industry. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.

Objectives and Legal Basis. The objective of this rule is to improve the price and supply reporting services of AMS in order to encourage competition in the marketplace for wholesale pork products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of wholesale pork products as specifically directed by the 1999 Act, the 2010 Reauthorization Act, and these proposed regulations, as described in detail in the background section.

Estimated Number of Small Businesses. This rule provides for the mandatory reporting of market information by pork wholesalers who, for any calendar year, have slaughtered 100,000 head of swine during the immediately preceding 5 calendar years, or any packing firm that has slaughtered at least 200,000 sows and/or boars on average during the preceding 5 years. Processing plants that have not slaughtered livestock during the immediately preceding 5 calendar years are also required to report if the Secretary determines that the plants should be considered packers based on their capacity.

The NAICS size standard classifies a small business in the meat packing industry as a company with less than 500 employees. Although it is common in the red meat industry for larger companies to own several plants, some of which may employ less than 500 people, those companies with a total slaughter plant employment at all locations of less than 500 are considered to be small businesses for the purposes of this rule even though individual plants are mandated to report as provided by the 1999 Act, 2010 Reauthorization Act, and these proposed regulations.

Approximately 36 individual pork packing companies representing a total of 56 individual plants are required to report information to AMS. Based on the NAICS size standard, 24 of these 36 pork packing companies are considered small businesses, representing 27 individual plants that are required to report. The figure of 56 plants required to report represents 9.2 percent of the swine plants in the United States. The remaining 90.8 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

AMS estimates the total annual burden on each swine packing entity to be, on average, $1,710.19, including $1,347.59 for annual costs associated with electronically submitting data, $246.50 for annual share of initial startup costs of $739.50, and $116.10 for the storage and maintenance of electronic files that were submitted to AMS.

Projected Recordkeeping. Each packer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, volume, weight, cut, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers are required by these regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, or weighing of all transactions. Reporting packers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers is further discussed in the section entitled ''Paperwork Reduction Act'' that follows.In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Professional skills required for record keeping under this rule are not different than those already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

This proposed rule as directed by the 2010 Reauthorization Act requires pork packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. These regulations already exempt many small businesses by the establishment of daily slaughter and processing capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 611 swine federally inspected slaughter plants operating in the United States at the end of 2010. AMS estimates that approximately 56 swine plants are required to report information, representing 9.2 percent of all federally inspected swine plants. Therefore, fully 90.8 percent of all swine plants are not required to report.

The impact of the costs of the rule to industry was also analyzed by plant capacity, measured in terms of number of head slaughtered.Industry cost by firm size, as measured in number of head slaughtered, is shown in the following table. Firms that slaughter fewer than 100,000 per year are exempt from the rule. These data do not distinguish between barrow/gilt slaughter and sow/boar slaughter, so all firms are assumed to report on barrows/gilts.

The data show that on a per head basis, the costs of this rule range from 0.033 cents per head slaughtered for the largest firms to approximately one cent per head for the smallest plants affected by the rule. On average, the cost burden is 0.084 cents per head slaughtered.Roughly 30 plants, or 4.5 percent of all plants in the industry, have costs that exceed this value.With an average hog carcass price of $87.90 for the year to date, and an average weight of 205 pounds per carcass, the price paid per head is roughly $180. The additional cost of one cent per head, the largest expected cost for plants impacted by the rule, does not appear to represent a significant cost increase.

In the table below, showing data for 2010, 91.2 percent of all plants (or 557 of 611 plants) would not have been expected to incur any reporting costs. All the costs would have been borne by the largest 8.8 percent of plants. Because the data in this table do not differentiate between sow/boar and barrow & gilt plants, these figures are approximates of the actual values, but are illustrative of the expected distributional impacts of the rule.

HOGS, NUMBER OF FEDERALLY INSPECTED PLANTS, HEAD SLAUGHTERED, TOTAL COST, AND COST/HEAD BY SIZE GROUP UNITED STATES: 2010 *

Number head	Number of plants	Thousand head	Total cost	Cost/head
1–999	385	117.6	$0.00	$0.00000
1,000–9,999	116	328.4	0.00	0.00000
10,000–99,999	56	2,163.0	0.00	0.00000
100,000–249,999	14	2,235.8	23,942.66	0.01071
250,000–499,999	8	2,799.8	13,681.52	0.00489
500,000–999,999	5	3,346.7	8,550.95	0.00255
1,000,000–1,999,999	3	4,850.5	5,130.57	0.00106
2,000,000–2,999,999	11	26,862.7	18,812.09	0.00070
3,000,000–3,999,999	1	3,862.4	1,710.19	0.00044
4,000,000+	12	62,747.8	20,522.28	0.00033
Total	611	109,314.7	92,340.26	0.00084

* Source: U.S. Department of Agriculture, National Agricultural Statistics Service, ''Livestock Slaughter: 2010 Annual Summary,'' April 2011.

In summary, the RFA analysis showed that of the 56 firms facilities that are required to report, 27 (just under half) qualify as being owned by small businesses. These 27 facilities are owned by 24 of the 36 companies subject to the rule. However, given the capital intensive nature of the industry, a more appropriate approach to the RFA analysis may be the number of head slaughtered by company. This approach was recognized by Congress in the original LMR legislation, by placing a 100,000 head minimum slaughter requirement on firms which report. Using that standard, fewer than 10 percent of all firms in the industry are affected by this regulation. In addition, the increased cost of the rule represents at most roughly 0.006 percent the current hog carcass value ($0.01/$180.00). Based on this analysis, AMS determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with 5 CFR part 1320, we include the description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under this proposed rule. If the proposed rule is finalized, it is the intent of AMS to submit to OMB a request to merge this collection into the currently approved collection, ''Livestock Mandatory Reporting Act of 1999'', OMB number 0581–0186.

The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 34 commodity pork packer plants, 12 sow/boar meat packer plants, and 10 packer plants processing both commodity pork and sow/boar meat that are required to report market information under this rule. These companies have similar record keeping systems and business operation practices and conduct their operations in a similar manner. The Committee believes that all of the information required under this proposed rule can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the new requirements.

The PRA also requires AMS to measure the recordkeeping burden. Under this proposed rule, each packer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Under this proposed rule, the electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. Therefore, the recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, and weighing of wholesale pork products are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs will nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $116.10. This estimate includes the cost per respondent to maintain such records which is estimated to average 5 hours per year at $23.22 per hour.

In this proposed rule, information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. The requirements include the submission of the required information on a daily basis in the standard format provided in the form included in the Appendices section. This form requires the minimal amount of information necessary to properly describe each reportable transaction, as required under this proposed rule.

1. Wholesale Pork Daily Report: Form LS–89

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on wholesale pork sales to the Secretary.

Estimated Number of Respondents: 34 commodity pork plants, 12 sow/boar meat plants and 10 combination commodity pork/sow/boar meat plants.

Estimated Number of Responses per Respondent: 520 per year for commodity pork (2 per day for 260 days); 260 per year for sow/boar meat (1 per day for 260 days); and 520 per year (2 per day) for combination commodity pork/sow/boar meat.

Estimated Total Annual Burden on Respondents: 3,250 hours. With 260 reporting days per year, commodity pork processors, and processors which produce a combination of commodity pork/sow/boar meat, will submit a total of 520 responses per year, and sow/boar meat processors will submit a total of 260 responses per year. This includes 5 hours for recordkeeping, annually, for each of the 56 respondents (total recordkeeping hours of 280).

BREAKDOWN OF ESTIMATED DATA SUBMISSION COST BURDEN

Item	Reporting days		Responses		Total responses
I. Number of Responses per Respondent per Year					
Commodity Pork/Combination	260	×	2 daily	=	520
Sow/Boar Meat	260	×	1 daily	=	260

At 0.125 hours per submission, commodity pork/combination processors will require 65.0 hours of reporting time, while sow/boar meat processors will require 32.5 hours of reporting time.

Item	Submissions/ year		Hours/ submission		Total hours/year
II. Number of Submission Hours per Respondent per Year					
Commodity Pork/Combination	520	×	.125	=	65.00
Sow/Boar Meat	260	×	.125	=	32.50

Total annual submission costs for commodity pork and combination pork processors is expected to be $1,509.30 with a clerical cost of $23.22 per hour, including benefits. Annual costs for sow meat processors will equal $754.65.

Item	Total Hours/ year		Cost/hour		Total $'s/ year
III. Total Submission Cost per Respondent per Year					
Commodity Pork/Combination	65.00	×	$23.22	=	$1,509.30
Sow/Boar Meat	32.50	×	23.22	=	754.65

A total of 44 respondents are expected to report commodity pork/combination wholesale data, while 12 sow/boar meat respondents are anticipated. Ten of the respondents will report on both types of product. In all, 56 different respondents will be reporting, incurring total annual submission costs of about $75,465.00.

Item	Total $'s/ year		# of Respondents		Total Cost
IV. Total Yearly Submission Cost for all Respondents					
Commodity Pork/Combination	$1,509.30	×	44	=	$66,409.20
Sow/Boar Meat	754.65	×	12	=	9,055.80
Total					75,465.00

Estimated Total Annual Burden on Respondents: $95,770.64 including $75,465.00 for annual costs associated with electronically submitted responses (3,250 annual hours (58.036 annual hours per 56 respondents) @ $23.22 per hour, for a total of $1,347.59 per respondent), initial electronic data transfer setup costs of $13,804.00 ($739.50 prorated over 3 years = $246.50 per 56 respondents), and $6,501.60 ($116.10 per 56 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

A 60-day comment period is also provided for interested persons to comment on the regulatory provisions of this proposed rule. AMS is also inviting comments concerning the information collection and recordkeeping requirements contained in this proposed rule. Comments are specifically invited on: (1) The accuracy of the burden estimate of the proposed collection of information including the validity of the methodology and the assumptions used; (2) ways to minimize the burden of the collection of information on those who would be required to respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information was sufficient or necessary for the proper performance of the functions of the agency as mandated by the 1999 Act and the Reauthorization Act; and (4) ways to enhance the quality, utility, and clarity of the information to be collected. All comments should be submitted at: *http://www.regulations.gov,* or may be sent to Michael Lynch, Director, Livestock and Grain Market News Division, 1400 Independence Ave. SW., Room 2619–S, Washington, DC 20250–0252, or by fax to (202) 690–3732.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503, and should reference the date and page number of this issue of the **Federal Register**. All responses to this proposed rule will be summarized and included in the request for OMB approval, and will become a matter of public record. The comment period for the information collection and recordkeeping requirements contained in this proposed rule is also 60 days.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Sheep, Livestock, Lamb.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter I of the Code of Federal Regulations is amended by revising part 59 to read as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C. 1635–1636i.

2. Section 59.20 is amended by adding paragraph (f) to read as follows:

§ 59.20 [Amended]

* * * * *

(f) Reporting Sales of Wholesale Pork. A record of a sale of wholesale pork by a packer shall evidence whether the sale occurred:

(1) Before 10 a.m. central time;

(2) Between 10 a.m. and 2 p.m. central time; or

(3) After 2 p.m. central time.

§ 59.30 [Amended]

3. Section 59.30 is amended by:

A. Revising the definition of ''F.O.B.'' to read as follows:

F.O.B. The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (e.g., F.O.B. Plant, F.O.B. Feedlot) or from a common basis point to the buyer (e.g., F.O.B. Omaha).

B. Revising the last two sentences in the definition of ''Institutional Meat Purchase Specifications'' to reflect an updated phone number and Web address.

* * * Phone (202) 260–8295 or Fax (202) 720–1112. Copies may also be obtained over the Internet at *http://www.ams.usda.gov/AMSv1.0/LivestockStandardizationIMPS.*

C. Revising the definition of ''Lot'' to read as follows:

* * * * *

(3) When used in reference to boxed beef, wholesale pork, and lamb, the term 'lot' means a group of one or more boxes of beef, wholesale pork, or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

§ 59.200 [Amended]

4. Section 59.200 is amended by:

A. Adding, in alphabetical order, a definition for ''Formula marketing arrangement'':

Formula marketing arrangement. When used in reference to wholesale pork, the term 'formula marketing arrangement' means an agreement for the sale of pork executed in advanceof

manufacture under which the price is established in reference to publicly-available quoted prices.

B. Adding, in alphabetical order, a definition for ''Forward sale'':

Forward sale. When used in reference to wholesale pork, the term 'forward sale' means an agreement for the sale of pork where the delivery is beyond the timeframe of a ''negotiated sale'' and means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement.

C. Adding, in alphabetical order, a definition for ''Negotiated sale'':

Negotiated sale. The term 'negotiated sale' means a sale by a packer selling wholesale pork to a buyer of wholesale pork under which the price is determined by seller-buyer interaction and agreement, and scheduled for delivery not later than 14 days for boxed product and 10 days for combo product after the date of agreement. The day after the seller-buyer agreement shall be considered day one for reporting delivery periods.

D. Adding, in alphabetical order, a definition for ''Pork class'':

Pork class. The term ''pork class'' means the following types of swine purchased for slaughter: (1) Barrow/gilt; (2) sow; (3) boar.

E. Adding, in alphabetical order, a definition for ''Specialty pork products'':

Specialty pork product. The term 'specialty pork product' means wholesale pork produced and marketed under any specialty program such as genetically-selected pork, certified programs, or specialty selection programs for quality or breed characteristics.

F. Adding, in alphabetical order, a definition for ''Type of sale'':

Type of sale. The term ''type of sale'' with respect to wholesale pork means a negotiated sale, forward sale, or formula marketing arrangement.

G. Adding, in alphabetical order, a definition for ''Variety meats'':

Variety meats. The term 'variety meats' with respect to wholesale pork means cut/processing floor items, such as neck bones, tails, skins, feet, hocks, jowls, and backfat.

H. Adding, in alphabetical order, a definition for ''Wholesale pork'':

Wholesale pork. The term ''wholesale pork'' means fresh and frozen primals, sub-primals, cuts fabricated from sub-primals, pork trimmings, pork for processing, and variety meats (excluding portion-control cuts, cuts flavored above and beyond normal added ingredients that are used to enhance products, cured, smoked, cooked, and tray packed products). When referring to wholesale pork, added ingredients are used to enhance the product's performance (e.g. tenderness, juiciness) through adding a solution or emulsion via an injection or immersion process. The ingredients shall be limited to water, salt, sodium phosphate, antimicrobials, or any other similar combination of foresaid or similar ingredients and in accordance with established USDA regulations.

I. Adding a new section 59.205 that reads as follows:

§ 59.205 Mandatory reporting of wholesale pork sales.

(a) *Daily Reporting.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day for barrows and gilts (once by 10 a.m. central time, and once by 2 p.m. central time) and once each reporting day for sows and boars (by 2 p.m. central time) the following information on total pork sales established on that day inclusive since the last reporting as described in § 59.10 (b):

(1) The price for each wholesale pork sale, as defined herein, quoted in dollars per hundredweight on an F.O.B. Plant and an F.O.B. Omaha basis as outlined in § 59.205 (d). The price shall include brokerage fees, if applicable. All direct, specific, and identifiable marketing costs (such as point of purchase material, marketing funds, accruals, rebates, and export costs) shall be deducted from the net price if applicable and known at the time of sale;

(2) The quantity for each pork sale, quoted by number of pounds sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) Pork item description;

(iii) Pork item product code;

(iv) The product delivery period, in calendar days;

(v) The pork class (barrow/gilt, sow, boar);

(vi) Destination (Domestic, Export/Overseas, NAFTA);

(vii) Type of Refrigeration (Fresh, Frozen, age range of fresh product); and

(viii) Specialty pork product, if applicable

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day for gilt and barrow product and once each reporting day for sow and boar product.

(c) The Secretary shall obtain product specifications upon request.

(d) The Secretary shall provide freight information for the purpose of calculating prices on an F.O.B. Omaha basis. The Secretary shall provide this information periodically, but not less than quarterly.

Dated: March 15, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A to Subpart C—Swine Mandatory Reporting Form

The following form referenced in Subpart C of part 59 would be used by persons required to report electronically transmitted mandatory market information on domestic sales of boxed beef to AMS.

Swine

LS–89—Wholesale Pork Daily Report

Appendix B to Subpart C—Mandatory Reporting Guideline

The following mandatory reporting form guidelines will be used by persons required to report electronically transmitted mandatory market information to AMS.

The first 10 fields of each mandatory reporting form provide the following information: identification number (plant establishment number ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information was submitted (mm/dd/yyyy),and reporting time (the submission time corresponding to the 10 a.m. and the 2 p.m. reporting requirements).

(a) Wholesale Pork Mandatory Reporting Forms

(1) LS–89—Wholesale Pork Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination (12). Enter '1', domestic, for product shipped within the 50 States; '2', exported, for product shipped outside of the 50 States; and '3', exported, for product shipped NAFTA (Canada or Mexico).

(iii) Sales type code (13). Enter the code corresponding to the sale type of the lot of wholesale pork.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of wholesale pork.

(v) Refrigeration (15). Enter '1' if the product is sold in 0–6 days fresh, combo; '2' if the product is sold 7 or more days fresh, combo; '3' if the product is sold 0–10 days

fresh, boxed; '4' if the product is sold 11 or more days fresh, boxed; and '5' if the product is sold in a frozen condition.

(vi) Class code (16). Enter '1' if the product was derived from barrows/gilts, '2' for sows, '3' for boar, and '4' for mixed.

(vii) Pork item product code (17). Enter the company product code for item sold.

(viii) Pork item—Description (18). Enter the pork item name.

(ix) Total product weight (19). Enter the total weight of the wholesale pork cuts in the lot in pounds.

(xii) F.O.B. Plant Price (20). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xiii) F.O.B. Omaha Price (21). Enter the price received for each wholesale pork cut in the lot in dollars per one hundred pounds, FOB Omaha basis.

BILLING CODE 3410–02–P

FORMAPPROVED. -OMBNO.0581-0186

UNITED STATESDEPARTMENT OFAGRICULTURE

AGRICULTURAL MARKETINGSERVICE

WHOLESALE PORK DAILY REPORT

1.IDENTIFICATIONNUMBER	
2.COMPANY NAME	
3.PLANT STREETADDRESS	
4.PLANT CITY	
5.PLANT STATE	
6.PLANT ZIPCODE	
7.CONTACT NAME	
8.PHONE NUMBER (include area code)	
9.REPORTINGDATE(mm/dd/yyyy)	
10.REPORTINGTIME(1 =10:00 a.m.;2 =2:00 p.m.)	
11.LOTIDENTIFICATION	
12. DESTINATION(1 =Domestic;2 =Export/Overseas;3 = NAFTA)	
13.SALES TYPECODE	
14.DELIVERY PERIODCODE	
15.REFRIGERATION	
16.CLASS CODE	

DELIVERYPERIODCODE	CLASS CODE	REFRIGERATIONCODE
1 = 0-14 DAYS BOX 2 =15-60 DAYS BOX 3 =61 DAYS/UP BOX 4 =0-10 DAYS COMBO 5 =11-60 DAYS COMBO 6 =61 DAYS/UP COMBO	1 =BARROW/GILTS 2 =SOW 3 =BOAR 4 =MIXEDBAR/GLT/SOW/BOAR	1 =0-6 FRESH,COMBO 2 =7+ FRESH,COMBO 3 =0-10 FRESH,BOXED 4 =11+ FRESH,BOXED 5 =FROZEN

SALESTYPECODE
1 =NEGOTIATEDSALE 2 =FORWARD SALE 3 =FORMULA MARKETING ARRANGEMENT

NOTE: AccordingtothePaperworkReductionActof1995,anagencymaynotconductorsponsor, andapersonisnotrequiredto respondto acollectionof informationunlessitdisplaysavalidOMB controlnumber. ThevalidOMB controlnumberforthisinformationcollectionis0581-0186. Thetime requiredto completethisinformationcollectionisestimatedto average10minutesperresponse, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection ofinformation.

TheU.S.Departmentof Agriculture(USDA)prohibitsdiscriminationinallitsprogramsandactivitieson thebasisofrace,color,nationalorigin,age,disability,andwhereapplicable,sex,maritalstatus, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal,orbecauseallorpartof anindividual'sincomeisderivedfromanypublicassistanceprogram (Notallprohibitedbasesapplytoallprograms.)Personswithdisabilitieswhorequirealternative meansforcommunicationofprograminformation(Braille,largeprint,audiotape,etc.) shouldcontact USDA'sTARGET Centerat(202)720-2600(voiceandTDD). Tofileacomplaintofdiscrimination, writetoUSDA,Director,Office ofCivilRights,1400IndependenceAvenue,S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

17. PORKITEMPRODUCT CODE	
18.PORKITEM- Description	
19.TOTALPRODUCT WEIGHT	
20.FOBPLANT PRICE ($/CWT)	
21.FOBOMAHAPRICE ($	

LS-89

[FR Doc. 2012–6992 Filed 3–22–12; 8:45 am]
BILLING CODE 3410–02–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0079; Directorate Identifier 2012–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pratt & Whitney PW4052, PW4152, PW4056, PW4156A, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4158, PW4460, PW4462, PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A turbofan engines with certain high-pressure turbine (HPT) stage 1 front hubs installed. This proposed AD was prompted by Pratt & Whitney's updated low-cycle-fatigue analysis that indicated certain HPT stage 1 front hubs could initiate a crack prior to the published life limit. This proposed AD would require removing the affected HPT stage 1 front hubs from service using a drawdown plan. We are proposing this AD to prevent failure of the HPT stage 1 front hub, which could lead to an uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 22, 2012.

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

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

For service information identified in this proposed AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0079; Directorate Identifier 2012–NE–06–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

A PW2000 field event led Pratt & Whitney to re-evaluate the low-cycle fatigue analysis of the PW2000 engine and similar engine models, including the PW4000 engine. Pratt & Whitney's updated analysis indicated that the original grain size requirement specified on the HPT stage 1 front hub design drawing was too large, and may not be sufficient to meet the published life limits. Although we have not received any reports of cracks, parts with the larger grain size may initiate a crack prior to the published life limits. This condition, if not corrected, could result in failure of the HPT stage 1 front hub, which could lead to an uncontained engine failure and damage to the airplane.

Relevant Service Information

We reviewed Pratt & Whitney Service Bulletin (SB) No. PW4ENG 72–795, Revision 2, dated April 5, 2011, and SB No. PW4G–100–72–220, Revision 4, dated September 30, 2011. The SBs list the serial numbers of HPT stage 1 front hubs with part number (P/N) 51L901 that are NOT affected by this AD. However, all serial numbers of HPT stage 1 front hubs with P/N 51L201, P/N 51L201–001, P/N 51L601, and P/N 52L401 are affected.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removing the affected HPT stage 1 front hubs from service using a drawdown plan.

Costs of Compliance

We estimate that this proposed AD would affect 954 engines installed on airplanes of U.S. registry. About 605 engines use a 20,000 cycles-since new (CSN) life limit for the HPT stage 1 front hub. For these engines, we estimate the lost part life to have a value of about $25,400 per engine. About 349 engines use a 15,000 CSN life limit. For these engines, we estimate the lost life to have a value of about $22,013 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators is $23,049,537.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Division: Docket No. FAA–2012–0079; Directorate Identifier 2012–NE–06–AD.

(a) Comments Due Date

We must receive comments by May 22, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Pratt & Whitney Division turbofan engines:

(1) PW4052, PW4152, and PW4056 turbofan engines, including models with any dash number suffix, with the following high-pressure turbine (HPT) stage 1 front hub part numbers (P/Ns) installed:

(i) P/N 51L201, or P/N 51L201–001, or P/N 51L601, or P/N 52L401; or

(ii) P/N 51L901 with a serial number (S/N) not listed in Table 9 of the Accomplishment Instructions of Pratt & Whitney Service Bulletin (SB) No. PW4ENG 72–795, Revision 2, dated April 5, 2011.

(2) PW4156A, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4158, PW4460, and PW4462 turbofan engines, including models with any dash number suffix, with the following HPT stage 1 front hub P/Ns installed:

(i) P/N 51L201, or P/N 51L201–001, or P/N 52L401; or

(ii) P/N 51L901 with an S/N not listed in Table 9 of the Accomplishment Instructions of Pratt & Whitney SB No. PW4ENG 72–795, Revision 2, dated April 5, 2011.

(3) PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A turbofan engines with an HPT stage 1 front hub P/N 51L901 installed with a S/N not listed in Table 27A of the Accomplishment Instructions of Pratt & Whitney SB No. PW4G–100–72–220, Revision 4, dated September 30, 2011.

(d) Unsafe Condition

This AD was prompted by Pratt & Whitney's updated low-cycle-fatigue analysis that indicated certain HPT stage 1 front hubs could initiate a crack prior to the published life limit. This AD requires removing the affected HPT stage 1 front hubs from service using a drawdown plan. We are issuing this AD to prevent failure of the HPT stage 1 front hub, which could lead to an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(f) Removal of HPT Stage 1 Front Hubs From Service

(1) For HPT stage 1 front hubs listed in paragraph (c)(1)(i) and (c)(1)(ii) of this AD, do the following:

(i) If the HPT stage 1 front hub has accumulated 17,000 or fewer cycles-since new (CSN) on the effective date of this AD, remove the HPT stage 1 front hub from service before accumulating 18,000 CSN.

(ii) If the HPT stage 1 front hub has accumulated more than 17,000 CSN on the effective date of this AD, remove the HPT stage 1 front hub from service before accumulating an additional 1,000 cycles-in-service (CIS), or at the next piece-part exposure after the effective date of this AD, whichever occurs first.

(2) For HPT stage 1 front hubs listed in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this AD, do the following:

(i) If the HPT stage 1 front hub has accumulated 12,700 or fewer CSN on the effective date of this AD, remove the HPT stage 1 front hub from service before accumulating 13,700 CSN.

(ii) If the HPT stage 1 front hub has accumulated more than 12,700 CSN on the effective date of this AD, remove the HPT stage 1 front hub from service before accumulating an additional 1,000 CIS, or at the next piece-part exposure after the effective date of this AD, whichever occurs first.

(g) Installation Prohibition

After the effective date of this AD, do not install or reinstall into any engine any HPT stage 1 front hubs listed in paragraph (c)(1)(i) and (c)(1)(ii) of this AD that are at piece-part exposure and exceed 18,000 CSN, or any HPT stage 1 front hubs listed in (c)(2)(i), (c)(2)(ii), and (c)(3) of this AD that are at piece-part exposure and exceed 13,700 CSN.

(h) Definition

For the purpose of this AD, piece-part exposure means that the part is completely disassembled and removed from the engine.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605.

(3) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 14, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–6965 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0324; Directorate Identifier 2012–CE–008–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft- und Raumfahrt GmbH Powered Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for

Burkhart GROB Luft- und Raumfahrt GmbH Models GROB G 109 and GROB G 109B powered sailplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive corrosion on the nose plate in the vertical stabilizer, which could cause the vertical stabilizer nose plate to fail. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 7, 2012.

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

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

For service information identified in this proposed AD, contact Grob Aircraft AG, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: +49 (0) 8268 998139; fax: +49 (0) 8268 998200; email: *productsupport@grob-aircraft.com;* Internet: *http://www.grob-aircraft.de.61.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0324; Directorate Identifier 2012–CE–008–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments. We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2012–0027, dated February 14, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Occurrences have been reported of finding heavily corroded nose plates, part number (P/N) 109–2160.01, in the vertical stabiliser of some Grob G 109 powered sailplanes.
>
> The investigation results concluded that the affected aeroplanes were based and operated near the seaside and therefore exposed to a salty environment, causing the excessive corrosion.
>
> This condition, if not detected and corrected, could lead to failure of the vertical stabilizer nose plate, which functions as a horizontal stabiliser fitting, to support limit loads and consequent loss of control of the aeroplane.
>
> For the reasons described above, this AD requires repetitive inspections and, depending on findings, replacement of the nose plate.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Grob Aircraft has issued Service Bulletin No. MSB817–58 and Service Bulletin No. MSB 817–060, both dated November 24, 2011, Repair Instruction Doc. No. RI 817–009, issue date November 17, 2011, and Repair Instruction Doc. No. RI 817–010/1, issue date December 20, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 59 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $424 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $55,106, or $934 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing $243, for a cost of $1,263 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Burkhart GROB Luft- und Raumfahrt GmbH: Docket No. FAA–2012–0324; Directorate Identifier 2012–CE–008–AD.

(a) Comments Due Date

We must receive comments by May 7, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Burkhart GROB Luft- und Raumfahrt GmbH Models GROB G 109 and GROB G 109B powered sailplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizer.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive corrosion on the nose plate in the vertical stabilizer. We are issuing this AD to detect and correct corrosion and flaking on the nose plate, which could cause the vertical stabilizer nose plate to fail and result in loss of control of the sailplane.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 3 months after the effective date of this AD:

(i) Inspect, from the top, the front and rear side of the nose plate, part number (P/N) 109–2160.01, in the vertical stabilizer for corrosion and flaking following Part A of the Accomplishment Instructions in Grob Aircraft Service Bulletin No. MSB817–58, dated November 24, 2011. Repetitively thereafter inspect at intervals not to exceed 12 months.

(ii) Install an access panel on the left side of the vertical stabilizer following Grob Aircraft Repair Instruction Doc. No. RI 817–010/1, issue date December 20, 2011, as specified in Grob Aircraft Service Bulletin No. MSB 817–060, dated November 24, 2011.

(iii) Through the access panel installed as required in paragraph (f)(1)(ii) of this AD, inspect, from below, the nose plate, P/N 109–2160.01, for corrosion and flaking following Part B of the Accomplishment Instructions in Grob Aircraft Service Bulletin No. MSB817–58, dated November 24, 2011. Repetitively thereafter inspect at intervals not to exceed 12 months.

(2) If any corrosion or flaking is found on the nose plate, P/N 109–2160.01, during any inspection required in paragraphs (f)(1)(i) or (f)(1)(iii) of this AD, replace P/N 109–2160.01 with a serviceable part. Do the replacement following Grob Aircraft Repair Instruction Doc. No. RI 817–009, issue date November 17, 2011, as specified in Grob Aircraft Service Bulletin No. MSB817–58, dated November 24, 2011. After replacement, continue with the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(iii) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EAS) AD No. 2012–0027, dated February 14, 2012; Grob Aircraft Service Bulletin No. MSB817–58 and Grob Aircraft Service Bulletin No. MSB 817–060, both dated November 24, 2011; Grob Aircraft Repair Instruction Doc. No. RI 817–009, issue date November 17, 2011; and Grob Aircraft Repair Instruction Doc. No. RI 817–010/1, issue date December 20, 2011 for related information. For service information related to this AD, contact Grob Aircraft AG, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: +49 (0) 8268 998139; fax: +49 (0) 8268 998200; email: *productsupport@grob-aircraft.com;* Internet: *http://www.grob-aircraft.de.61.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 19, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7012 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. FDA–2012–N–0205]

Agreements and Memoranda of Understanding Between the Food and Drug Administration and Other Departments, Agencies, and Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We are publishing this companion proposed rule to the direct final rule on ''Agreements and Memoranda of Understanding Between the Food and Drug Administration and Other Departments, Agencies, and Organizations,'' which makes technical changes intended to update a requirement that many of these agreements and memoranda of understanding (MOUs) be published in the **Federal Register**. Because we already post and will continue to post our ongoing agreements and MOUs with other departments, Agencies, and organizations on our Web site upon their completion, this requirement is no longer necessary. This proposed rule, accordingly, would eliminate it. We are proposing these technical changes to conserve Agency time and resources, reduce government paperwork, and eliminate unnecessary **Federal Register** printing costs while continuing to afford public access to these documents.

DATES: Submit either electronic or written comments on or before June 6, 2012. If we receive any significant adverse comments, we will publish a document withdrawing the direct final rule within 30 days after the comment period ends. We will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0205 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–0205 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4706, FAX: 301–847–8616, email: *daniel.sigelman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 3, 1974 (39 FR 35697), we announced that copies of all our MOUs transacted with government Agencies and nongovernment organizations were available for public review at our offices during working hours and would be published in the **Federal Register**. We subsequently codified this policy in the **Federal Register** of December 24, 1974 (39 FR 44602 at 44651), and recodified it where it currently appears in § 20.108 (21 CFR 20.108) in the **Federal Register** of March 22, 1977 (42 FR 15616 at 15625).

Consumers, industry, professional groups, associations, educators, and other government Agencies had manifested widespread interest in the texts of these MOUs. The intent of § 20.108 was to promote transparency by providing access to these stakeholders.

This proposed rule would eliminate the requirement in current § 20.108(c) that our agreements and MOUs with other departments, Agencies, and organizations be published in the **Federal Register** on an individual basis and instead will require that they be posted on our Web site. We increasingly rely on Internet-based communications to ensure and promote transparency in our operations and activities. So it is with this proposed rule, which would merely recognize and codify our already established practice of making our ongoing agreements and MOUs with other departments, Agencies, and organizations publicly available on our Web site. At the time of this writing, each such publicly disclosable agreement and MOU can be accessed at one of the following three Food and Drug Administration (FDA) Web site locations:

http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/default.htm;
http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/AcademiaMOUs/default.htm; or
http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/OtherMOUs/default.htm.

Because all publicly disclosable agreements and MOUs are posted on our Web site, it is no longer necessary to require, as does current § 20.108(b), that a permanent file of them be available for public review during working hours in the Agency's Freedom of Information Public Room. Accordingly, the proposed rule would revise current § 20.108(b).

The public's access to an FDA Web site that is regularly updated to include agreements and MOUs as they are completed has already greatly enhanced the speed, ease, and convenience with which stakeholders can obtain and review these documents.

Our proposed technical changes would lessen demands on the time of our staff and reduce the Government paperwork and printing costs associated with **Federal Register** publication of newly completed agreements and MOUs with other departments, Agencies, and organizations. At the same time, it would continue to ensure, consistent with the underlying intent of § 20.108, the accessibility of records of widespread interest to consumers, industry, professional groups, associations, educators, and other government Agencies.

Currently, § 20.108(c) treats our cooperative work-sharing agreements with State or local government Agencies differently from our agreements and MOUs with other Agencies and organizations. Because these cooperative work-sharing agreements rarely vary significantly from one another, we decided against publishing their full texts in the **Federal Register**

(51 FR 19851, June 3, 1986). Instead, since 1993, we have merely required them to be listed at least once every 2 years in the **Federal Register** (58 FR 48794, September 20, 1993). This proposed rule would end such disparate treatment. Proposed § 20.108(b) would apply to all of our written agreements and MOUs with other departments, Agencies, and organizations, including cooperative work-sharing agreements with State or local government Agencies, except for signed agreements and MOUs relating to activities of our Office of Criminal Investigations, which are addressed in § 20.108(d), which would be revised and redesignated as § 20.108(c).

This proposed rule would not amend § 20.108(a) (stating that our written agreements and MOUs are available for public disclosure).

II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework within which the rule may be finalized in the event that any significant adverse comment is received in response to the direct final rule and it is withdrawn. FDA is publishing the direct final rule because we believe the rule is noncontroversial, and we do not anticipate receiving any significant adverse comments. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead we will publish a document confirming the effective date within 30 days after the comment period ends, confirming when the direct final rule will go into effect.

If we receive any significant adverse comment regarding the direct final rule, we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures under the Administrative Procedures Act (APA) (5 U.S.C. 552a *et seq.*). The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule, and vice versa. We will not provide additional opportunity for comment. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

In the **Federal Register** of November 21, 1997 (62 FR 62466), we announced the availability of the guidance document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures.'' This guidance document may be accessed at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would not impose any significant costs, we propose to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. We do not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Paperwork Reduction Act of 1995

We have concluded that this proposed rule contains no ''collections of information. '' Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Environmental Impact

We have determined under 21 CFR 25.33 that this proposed rule is of a type that would not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we tentatively conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the

heading of this document and they may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

2. Amend section 20.108 as follows:

a. Revise paragraph (b);

b. Remove paragraph (c);

c. Redesignate paragraph (d) as paragraph (c);

d. Revise newly redesignated paragraph (c).

The revisions and redesignations read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, Agencies, and organizations.

* * * * *

(b) All written agreements and memoranda of understanding between FDA and any entity, including, but not limited to other departments, Agencies, and organizations will be made available through the Food and Drug Administration Web site at *http://www.fda.gov* once finalized.

(c) Agreements and understandings signed by officials of the Food and Drug Administration with respect to activities of the Office of Criminal Investigations are exempt from the requirements set forth in paragraph (b) of this section. Although such agreements and understandings will not be made available through the Food and Drug Administration Web site, these agreements will be available for disclosure in response to a request from the public after deletion of information that would disclose confidential investigative techniques or procedures, or information that would disclose guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

Dated: March 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6969 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 202

[Docket No. FDA–2009–N–0582]

RIN 0910–AG27

Direct-to-Consumer Prescription Drug Advertisements; Presentation of the Major Statement in Television and Radio Advertisements in a Clear, Conspicuous, and Neutral Manner; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period on specific data.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on specific data related to a proposed rule published in the **Federal Register** of March 29,, to establish standards that would be considered in determining whether the major statement in direct-to-consumer (DTC) television and radio advertisements relating to the side effects and contraindications of an advertised prescription drug intended for use by humans is presented in a clear, conspicuous, and neutral manner. In the **Federal Register** of January 27, 2012, FDA announced that it had added a document to the docket for the proposed rulemaking concerning a study entitled ''Experimental Evaluation of the Impact of Distraction on Consumer Understanding of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Television Advertisements'' (Distraction Study) and the public was given until February 27, 2012, to comment on this study as it relates to the proposed standards. FDA is reopening the comment period for the rulemaking proceeding in response to a request for more time to submit comments to the Agency.

DATES: Submit either electronic or written comments on the Distraction Study report as it relates to the proposed standards by April 9, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0582 and/or Regulatory Information Number (RIN) 0910–AG27, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (For paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, docket number, and RIN for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Ernest S. Voyard, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3276, Silver Spring, MD 20993–0002, 301–796–3832.

For information concerning human biological drug products: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 29, 2010 (75 FR 15376), FDA published a proposed rule entitled ''Direct-to-Consumer Prescription Drug Advertisements; Presentation of the Major Statement in Television and Radio Advertisements in a Clear, Conspicuous, and Neutral Manner,'' to amend its regulations concerning DTC advertisements of prescription drugs. Specifically, the proposed rule would implement a new requirement of the

Federal Food, Drug, and Cosmetic Act (the FD&C Act), added by section 901(d)(3)(A) of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) (FDAAA). This section requires that the major statement in DTC television or radio advertisements relating to the side effects and contraindications of an advertised prescription drug intended for use by humans be presented in a clear, conspicuous, and neutral manner, and directs FDA to publish regulations establishing the standards for determining whether a major statement meets these requirements. As directed by section 901(d)(3)(B) of FDAAA, the proposed rule described standards that the Agency would consider in determining whether the major statement is clear, conspicuous, and neutral, and it provided a 90-day period for public comment, which closed on June 28, 2010.

On January 27, 2012 (77 FR 4273), FDA reopened the comment period on this rulemaking until February 27, 2012, to allow an opportunity for interested parties to comment on FDA's analyses of the results of its study (see attachment in Docket No. FDA–2009–N–0582–0040) on the impact of distraction on consumer understanding of risk and benefit information in DTC prescription drug television advertisements (72 FR 47051, August 22, 2007) (Distraction Study) as it relates to the proposed standards. The Pharmaceutical Research and Manufacturers of America (PhRMA) submitted a letter dated February 20, 2012, requesting an additional 15 days for interested persons to comment. FDA believes that an additional 15 days to comment on the Distraction Study as it relates to the proposed standards is appropriate.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the Distraction Study as it relates to the proposed standards. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document and label them ''ATTN: Distraction Study.'' The data and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 16, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6948 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100

[Docket No. USCG–2012–0073]

RIN 1625–AA08

Special Local Regulations; Ocean State Tall Ships Festival 2012, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, for the Ocean State Tall Ships Festival 2012. This action is necessary to provide for the safety of life and property on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, during the Ocean State Tall Ships Festival on July 6–9, 2012. These temporary special local regulations would restrict vessel traffic in portions of Narragansett Bay and Newport Harbor, Rhode Island, unless authorized by the Captain of the Port (COTP) Sector Southeastern New England.

DATES: Comments and related material must be received by the Coast Guard on or before May 22, 2012. Requests for public meetings must be received by the Coast Guard on or before April 13, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0073 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0073), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0073 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to

know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–0073 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 13, 2012, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for this proposed rule is *33 U.S.C. 1233,* which authorizes the Coast Guard to define Special Local Regulations.

These temporary special local regulations are necessary to ensure the safety of vessels and spectators from hazards associated with the Ocean State Tall Ships Festival 2012.

Discussion of Proposed Rule

Newport, Rhode Island, will host the Ocean State Tall Ships Festival 2012 from July 6–9, 2012. This visit of Class A, B, and C sailing vessels is part of a recurring series of sail training races, rallies, cruises, and port festivals organized by Tall Ships America in conjunction with host ports in the United States and Canada. The Ocean State Tall Ships Festival 2012, including a Parade of Sail, is akin to similar events held several times in the past in Newport, Rhode Island, the most recent being in 2007.

The Tall Ships visit to Newport, which will occur from July 6–9, 2012, will include a Parade of Sail on July 9, 2012. About 20 Class A, B, and C vessels are expected to participate in the Parade of Sail. These temporary special local regulations will provide for the safety of life and protection of property on the navigable waters of Narragansett Bay and Newport Harbor, Rhode Island, by providing for the organized viewing of Tall Ships at their assigned berths during the festival and by preventing the large number of spectator vessels from interfering with the organized and controlled Parade of Sail. There may be vessels participating in the event from several foreign countries and the high visibility of this event warrants that temporary special local regulations be established to ensure the safety of vessels and spectators from hazards associated with the Ocean State Tall Ships Festival 2012.

The participating vessels will berth at assigned facilities in Newport, Rhode Island, from July 5–9 2012. The festival begins on July 6, 2012, when visitors will be permitted to get a relatively close view of the Tall Ships from recreational vessels in Newport Harbor, and also to board the berthed vessels from shore. On the morning of July 9, 2012, the Tall Ships will depart Newport Harbor and transit up the East Passage, Narragansett Bay, to a turning point just north of Gould Island. The vessels will then transit back down the East Passage, exit Narragansett Bay, and head for sea.

The Coast Guard believes that vessel congestion due to the large number of participating and spectator vessels may pose a significant hazard to navigation. To reduce the risk associated with congested waterways the Coast Guard is proposing to establish regulated areas to restrict vessel movement around the location of the participating Tall Ships while berthed at Newport, Rhode Island, and also while participating in the Parade of Sail in Narragansett Bay. These temporary special local regulations would be in effect at various times in Narragansett Bay beginning on July 6, 2012 through July 9, 2012.

Area ''Newport Harbor'': This Area would include all waters of Newport Harbor within an area bounded by Aquidneck Island to the east and south, by the Goat Island Causeway to the north, and by a line extending from the southernmost tip of Goat Island due south to Aquidneck Island. This area is needed to protect the maritime public and participating vessels from hazards to navigation associated with numerous spectator craft approaching participating Tall Ships berthed at various facilities in the Newport area for the Ocean State Tall Ships Festival 2012.

Area ''Potter Cove'': In connection with the Parade of Sail on July 9, 2012, this area would be of the same coordinates of the existing Anchorage A in the East Passage, Narragansett Bay, that lies north of the Claiborne Pell/Newport Bridge. This area would be used as a spectator anchoring area limited to excursion and passenger-for-hire vessels greater than 50 feet in length carrying passengers for the viewing of the Parade of Sail.

Vessels other than excursion and passenger-for-hire vessels greater than 50 feet in length would not be permitted to anchor and would be required to transit at reduced speeds staying at least 20 yards away from any vessels authorized to anchor or otherwise remain within Area Potter Cove.

Area ''Parade of Sail''

The Coast Guard proposes to establish an area to ensure the safety of spectator vessels and participating Tall Ships during the Ocean State Tall Ships Festival 2012 Parade of Sail on July 9, 2012.

This proposed Area includes all waters of the East Passage, Narragansett Bay, Rhode Island.

This area would be enforced only during the actual Parade of Sail. This area is designed to enhance navigation safety by facilitating the organized and controlled transit of participating vessels through the parade route and minimizing the impact on the maritime community.

Notice of these special local regulations would be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, Internet sites, television, and radio broadcasts.

The specific geographic locations of regulated areas and specific requirements of this rule are contained in the regulatory text.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analyses based on 14 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be minimal. These proposed regulations involve only the southern portion of Narragansett Bay and would close the East Passage to commercial traffic only for several hours during the actual Parade of Sail on July 9, 2012. The West Passage would remain open to vessel traffic at all times. The impact of these proposed regulations will not be significant because the majority of these proposed regulations would be in effect for only a portion of one day centered on the Parade of Sail, and most vessel traffic can pass safely around affected areas of the East Passage by transiting through the West Passage, Narragansett Bay.

Notice of these special local regulations would be provided prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, Internet sites, television, and radio broadcasts.

Mariners will be able to adjust their plans accordingly based on the extensive advance information.

Moreover, the Areas created by these special local regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay between July 6 and July 9, 2012, particularly during the Parade of Sail on July 9, 2012, when the navigation channel in the East Passage, Narragansett Bay, is closed for a period of time to all traffic except vessels participating in the Parade of Sail.

These proposed regulations would not have a significant economic impact on a substantial number of small entities for the following reasons: the regulations affecting navigation in the East Passage, Narragansett Bay, would be in effect temporarily, and only for those periods of time necessary for the safety of the Ocean State Tall Ships Festival 2012 participants and spectators in boats viewing the Parade of Sail from waters adjacent to the parade route. The East Passage would remain open to all vessel traffic for the entire Festival from July 6–8, 2012, and would only be closed to vessel traffic for several hours during the Parade of Sail on July 9, 2012. While the East Passage is closed, the West Passage would remain open and is capable of being used by all recreational and most commercial vessels.

Notice of these special local regulations would be provided prior to the event by Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Ocean State Tall Ships, Inc., is planning to publish information of the event in local newspapers, pamphlets, Internet sites, television, and radio broadcasts.

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

Assistance for Small Entities

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

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A proposed rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive

Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. It appears that this proposed rule will qualify for Coast Guard categorical exclusion (34)(h), as described in figure 2–1 of the Instruction. This proposed rule establishes temporary special local regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T01–0073 to read as follows:

§ 100.35T01–0073 Special Local Regulations; Ocean State Tall Ships 2012, Narragansett Bay and Newport Harbor, Rhode Island.

(a) *Regulated Areas:*

(1) Area Newport Harbor: All waters of Newport Harbor within an area bounded by Aquidneck Island to the east and south; by the Goat Island Causeway to the north; and by a line extending from the southernmost tip of Goat Island due south to Aquidneck Island.

(2) Area Potter Cove: This Area is of the same coordinates as that portion of charted Anchorage A, as defined in paragraph § 110.145(a)(1) of this chapter, that lies north of the Claiborne Pell/Newport Bridge.

(3) Area Parade of Sail: Includes all waters of the East Passage, Narragansett Bay, Rhode Island, within the following boundaries: Beginning at position 41°27′19″ N, 71°23′08″ W, then northward to position 41°28′18″ N, 71°22′14″ W, (Lighted Gong Buoy ''7'' (LLNR 17800)) then to position 41°28′38″ N, 71°21′15″ W, (Lighted Gong Buoy ''9'' (LLNR 17805)) then to position 41°29′00″ N, 71°21′00″ W, (Lighted Bell Buoy ''11'' (LLNR 17810)) then to position 41°29′33″ N, 71°21′04″ W, then to position 41°30′19″ N, 71°21′04″ W below the Claiborne Pell/Newport Bridge, then to position 41°31′07″ N, 71°21′17″ W, then to position 41°31′49″ N, 71°21′26″ W, then to position 41°32′30″ N, 71°21′22″ W, then to position 41°33′00″ N, 71°21′17″ W, then to position 41°33′38″ N, 71°21′00″ W, (U.S. Navy Buoy ''E'' (LLNR 18035)) then to position 41°33′52″ N, 71°20′27″ W, (U.S. Navy Buoy ''F'' (LLNR 18040)) then to position 41°33′48″ N, 71°19′55″ W, (the charted Halfway Rock). Area Parade of Sail will continue southward to position 41°33′14″ N, 71°19′12.5″ W, then to position 41°32′28″ N, 71°19′30.6″ W, then to position 41°31′55″ N, 71°19′42.7″ W, then to position 41°31′00″ N, 71°20′04″ W, (Lighted Bell Buoy ''14'' (LLNR 17940)) then to position 41°30′28″ N, 71°20′21″ W, then to position 41°30′12″, 71°20′30″ W below the Claiborne Pell/Newport Bridge, then to position 41°29′34″ N, 71°20′11″ W, (Mitchell Rock Gong Buoy ''3'' (LLNR 17865)), then to position 41°28′55″ N, 71°20′19″ W, then to position 41°27′55″ N, 71°21′43″ W, then to position 41°27′27″ N, 71°21′57″ W, (Bell Buoy ''6'' (LLNR 17790)), then to position 41°26′57″ N, 71°21′57″ W, then returning to the starting point at 41°27′19″ N, 71°23′08″ W. All coordinates are NAD 1983.

(b) *Special Local Regulations.*

(1) Definitions.

(i) As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, or local officer designated by the Captain of the Port (COTP).

(ii) Excursion vessel, as used in this section, refers to any vessel granted an excursion permit as such term is defined in 46 CFR 2.01–45.

(iii) Vessel carrying passengers-for-hire, as used in this section, refers to, but is not limited to, vessels subject to regulation under Subchapters H, K, and T of Title 46 of the Code of Federal Regulations.

(2) In accordance with the general regulations in section 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless designated for vessels of that size or entry is authorized by the Captain of the Port (COTP) Southeastern New England or designated representative.

(3) All persons and vessels are authorized by the COTP Southeastern New England to enter areas of these special location regulations in accordance with the following restrictions:

(i) *Area Newport Harbor:* Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6) knots. Vessels must not maneuver within 20 yards of a moored Tall Ship. Vessels must transit

this Area in a counterclockwise direction, entering Newport Harbor from the west, then proceeding north along the eastern side of the harbor to a turning point south of the Goat Island causeway in approximate position 41°29′28″ N and 71°19′40″ N, then proceeding south along the western side of Newport Harbor to the exit of the Area.

Vessels proceeding under sail will not be allowed in Area Newport Harbor unless also propelled by machinery, due to increased difficulty in maintaining required speed of advance while sailing as well as limited maneuvering ability to proceed in a single file behind numerous other spectator craft viewing the moored Tall Ships.

(ii) *Area Potter Cove:* This area is a spectator anchoring area limited to excursion and passenger-for-hire vessels greater than 50 feet in length carrying passengers for the viewing of the Parade of Sail. Vessels transiting this Area must do so at a speed of at least three (3) knots or at no wake speed, whichever is more, while not exceeding six (6) knots. Vessels transiting this Area must not maneuver within 20 yards of any vessel lawfully anchored within this area for the viewing of the Parade of Sail.

(iii) Area Parade of Sail: This will be closed to all vessel traffic, except those vessels designated as participants.

(4) All persons and vessels shall comply with the instructions of the COTP Southeastern New England or designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(5) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP Southeastern New England by telephone at 508–457–3211, or designated representatives via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Southeastern New England or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Southeastern New England or designated representative.

(6) The Coast Guard will provide notice of the regulated areas prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives.

(c) *Enforcement Period:* This section will be enforced during the following times.

(1) Area Newport Harbor, from 6 a.m. on July 6, 2012, to noon on July 9, 2012.

(2) Area Potter Cove, from 9 a.m. to 4 p.m. on July 9, 2012.

(3) Area Parade of Sail, from 9 a.m. to 4 p.m. on July 9, 2012.

Dated: February 29, 2012.

Verne B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.

[FR Doc. 2012–6986 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0004]

RIN 1625–AA08

Special Local Regulation; Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation (SLR) on the navigable waters of the Hudson River in the vicinity of New York, NY for the Macy's Fourth of July Fireworks Display. The temporary SLR is intended to restrict certain vessels from portions of the Hudson River before, during, and immediately after the fireworks event. This regulation is necessary to provide for the safety of life on the navigable waters by controlling vessel movement and to establish public viewing areas for the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before May 7, 2012. Requests for public meetings must be received by the Coast Guard on or before April 13, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0004 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ensign Kimberly Farnsworth, Coast Guard; telephone (718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0004), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0004) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0004) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed SLR is 33 U.S.C. 1233; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define special local regulations.

The proposed temporary SLR is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches proximate to water crafts pose a significant risk to public safety and property. The combination of increased numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed rule will temporarily establish regulated areas designated as spectator vessel viewing areas to restrict and control vessel movement around the location of the fireworks launch platforms to reduce the risk associated with the launch of fireworks.

Discussion of Proposed Rule

Macy's is sponsoring their annual Fourth of July Fireworks Display on the waters of the Hudson River in the vicinity of New York, NY. The fireworks display will occur from approximately 9:20 p.m. until 9:50 p.m. on July 4, 2012. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, the proposed regulated areas will be enforced from 7 p.m. until 11 p.m. on July 4, 2012.

If the event is cancelled due to inclement weather, then the proposed regulated areas will be enforced from 7 p.m. until 11 p.m. on July 5, 2012.

The Coast Guard will activate a pre-established safety zone under 33 CFR 165.160 (USCG–2010–1001), around the fireworks launch platforms. The safety zone may be referred to as area CHARLIE, and its location is defined in entry 1.1 of Table 1 to 33 CFR 165.160. Only fireworks launch platforms and assist vessels will be allowed to enter into the safety zone.

To augment the existing safety zone around the fireworks launch barges, the COTP New York will establish four limited access areas within the boundaries of the special local regulation. Access to these areas will be restricted to vessels of a certain size. The four designated areas within the SLR are: (1) A ''spectator area'' designated ALPHA in which access is limited to vessels less than 20 meters in length (65.6ft); (2) ''spectator area'' designated BRAVO in which access is limited to vessels greater than 20 meters in length (65.6ft); (3) ''spectator area'' designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6ft); and (4) a ''spectator area'' designated ECHO in which access is limited to vessels less than 20 meters in length (65.6ft).

The geographic locations of regulated areas, and specific requirements of this rule are contained in the regulatory text. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the limited time that vessels will be restricted from the fireworks display area. The temporary special local regulation will only be in effect for approximately four hours during the evening hours. The Coast Guard does not expect significant adverse impact to mariners from the regulated areas, because the event has been extensively advertised in the public and affected mariners may request authorization from the COTP New York or the designated representative to transit the zone. Advance notification will be made to the maritime community via Broadcast Notice to Mariners and Local Notice to Mariners (LNM).

Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York, NY during the effective period.

The temporary special local regulation will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only four hours on a single day during the late evening for this fireworks event. Although the regulation will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the COTP New York or the designated representative. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a special local regulation to regulate vessel traffic on a portion of the Hudson River during the launching of fireworks. This rule appears to be categorically excluded, under figure 2–1, paragraphs and (34)(h), of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATER

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T01–0004 to read as follows:

§ 100.35T01–0004 Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY.

(a) *Regulated area.* The regulated area includes all navigable waters of the Hudson River bounded by a line drawn from the northern most break-wall of the 79th Street Boat Basin, New York, NY, approximate position 40°47′11.70″ N, 073°59′8.83″ W, then west to a point on the shoreline of Guttenberg, NJ, approximate position 40°47′28.27″ N, 073°59′46.39″ W, then south along the New Jersey shoreline to a point in the vicinity of Port Imperial, Weehawken, NJ approximate position 40°46′35.43″ N, 074°00′37.53″ W, then east to a point in the vicinity of Pier 99, New York, NY approximate position 40°46′16.98″ N, 073°59′52.34″ W, then along the Manhattan shoreline north to the point of origin and all navigable waters of the Hudson River bounded by a line drawn from Maxwell Park, Hoboken, NJ, approximate location 40°44′55.90″ N, 074°01′24.94″ W, east to Chelsea Piers, New York, NY approximate location 40°44′48.97″ N, 074°00′41.01″ W,, south along the Manhattan shore line to Pier 40 approximate location 40°43′46.43″ N, 074°00′50.95″ W, and west to Hoboken/New Jersey Transit Station, Hoboken, NJ approximate location 40°43′50.38″ N, 074°01′41.68″ W, and then north to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined in this paragraph (a), the following are individually defined areas subject to specific requirements:

(1) Area ALPHA: All navigable waters of the Hudson River north of a line drawn from a point in the vicinity of Riverwalk Place, Weehawken, NJ, approximate position 40°46′50.85″ N, 074°00′19.52″ W, east to a point in the vicinity of 64th Street, New York, NY, approximate position 40°46′34.38″ N, 073° 59′30.98″ W, and south of a line drawn from the shoreline of Guttenberg, NJ, approximate position 40°47′28.27″ N, 073°59′46.39″ W, east to the northern most break-wall of the 79th Street Boat Basin, New York, NY, approximate position 40°47′11.70″ N, 073°59′8.83″ W. (NAD 83).

(2) Area BRAVO: All navigable waters of the Hudson River north of a line drawn from the ferry terminal at Port Imperial, Weehawken, NJ, approximate position 40°46′35.43″ N, 074°00′37.53″ W, east to a point in the vicinity of Pier 99, New York, NY, approximate position 40°46′16.98″ N, 073°59′52.34″ W, and south of a line drawn from Riverwalk Place, Weehawken, NJ, approximate position 40°46′51.01″ N, 074°00′19.52″ W, east to a point in the vicinity of 64th Street, New York, NY, approximate position 40°46′34.38″ N, 073°59′30.98″ W. (NAD 83).

(3) Area DELTA: All navigable waters of the Hudson River north of a line drawn to a point in the vicinity of Pier C Park, Hoboken, NJ, in approximate position 40°44′24.32″ N, 074°01′32.98″ W, east to Gansevoort Street, New York, NY, approximate position 40°44′20.46″ N, 074°00′37.28″ W, and south of a line drawn from in the vicinity of Chelsea Piers, approximate position 40°44′48.98″ N, 074°00′41.06″ W, then west to a point in near Maxwell Park, Hoboken, NJ, in approximate position 40°44′55.91″ N, 074°01′24.94″ W. (NAD 83).

(4) Area ECHO: All navigable waters of the Hudson River north of a line drawn Hoboken/New Jersey Transit Station approximate position 40°43′50.38″ N, 074°01′41.68″ W in Hoboken, NJ, east to Pier 40, New York, NY in approximate position 40°43′46.43″ N, 074°00′50.95″ W, and south of a line drawn from Pier C Park, Hoboken, NJ, in approximate position 40°44′24.32″ N, 074°01′32.98″ W, east to Gansevoort Street, New York, NY, approximate position 40°44′20.46″ N, 074°00′37.28″ W. (NAD 83).

(b) *Definitions.* For purposes of this section ''Designated representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port New York (COTP) to act on the COTP's behalf.

(c) *Special local regulations.* (1) In accordance with the general regulations in section 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or the designated representative.

(2) Vessels are authorized by the COTP or the designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i): Area ALPHA access is limited to vessels less than 20 meters (65.6 ft) in length.

(ii) Area BRAVO access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iii) Area DELTA access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iv) Area ECHO access is limited to vessels less than 20 meters (65.6 ft) in length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed. The COTP or the designated representative can be reached on VHF channel 16.

(d) *Effective period.* This rule will be effective from 7 p.m. to 11 p.m. on July 4, 2012. If the fireworks display is postponed, this section will be effective from 7 p.m. until 11 p.m. on July 5, 2012.

Dated: February 27, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2012–6980 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2007–0089; FRL–9650–9]

RIN 2060–AO17

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of a Group of Four Hydrofluoropolyethers (HFPEs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the agency's definition of volatile organic compounds (VOCs) for purposes of preparing State Implementation Plans (SIPs) to attain the national ambient air quality standard (NAAQS) for ozone under Title I of the Clean Air Act (CAA). This proposed revision would add four chemical compounds to the list of compounds excluded from the definition of VOC on the basis that each of these compounds makes a negligible contribution to tropospheric ozone formation. These compounds consist of four hydrofluoropolyethers (HFPEs) which are identified as HCF_2OCF_2H (also known as HFE-134), $HCF_2OCF_2OCF_2H$ (also known as HFE-236cal2), $HCF_2OCF_2CF_2OCF_2H$ (also known as HFE-338pcc13), and

$HCF_2OCF_2OCF_2CF_2OCF_2H$ (also known as H-Galden 1040X or H-Galden ZT 130 (or 150 or 180)). In addition, the EPA is proposing to make certain technical corrections to the current list of exempt compounds at 40 CFR 51.100(s)(1).

DATES: Comments must be received on or before April 23, 2012. *Public Hearing:* If anyone contacts us requesting us to hold a public hearing by April 9, 2012, we will hold a public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0089, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email:* Comments may be sent by electronic mail (email) to *a-and-r-Docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2007–0089.
- *Fax:* Fax your comments to: 202–566–1741, Attention Docket ID No. EPA–HQ–OAR–2007–0089.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code: 2822T, 1301 Constitution Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0089.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue NW., Room 3334, Washington, DC 20004. Attention: Docket ID No. EPA–HQ–OAR–2007–0089. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0089. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider as CBI or otherwise protected information through *www.regulations.gov,* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Office of Air and Radiation Docket and Information Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, State and Local Programs Group, Mail Code (C539–01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–3356 or fax (919) 541–0824; and email address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule include, but are not necessarily limited to, states (typically state air pollution control agencies) that control VOCs, and industries listed in the following table involved in the manufacture or use of fire suppressants and specialized refrigerants in secondary loop refrigeration systems for heat transfer.

This proposed rule is applicable to all manufacturers, distributors, and users of these chemical compounds.

Industry group	SIC [a]	NAICS [b]
Fire Suppression	2899	325998, 423990
Refrigerants	2869, 3585	238220, 336111

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

Submitting CBI: Do not submit this information to the EPA through *www.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 the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, Mail code C504–01, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0641, facsimile number (919) 541–5509, electronic email address: *long.pam@epa.gov.*

D. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for the EPA?
C. How can I find information about a possible public hearing?
D. How is this preamble organized?
II. Background
A. VOC Exemptions
B. Petitioned Compounds to List as Negligibly Reactive: HCF_2OCF_2H (HFE 134), $HCF_2OCF_2OCF_2H$ (HFE-236cal2), $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13), and $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180))
III. The EPA Response to the Petition
A. Contribution to Tropospheric Ozone
B. Likelihood of Risk to Human Health or the Environment
C. Conclusion
IV. Proposed Action
V. Statutory and Executive Orders Reviews
A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

A. VOC Exemptions

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs are those organic compounds of carbon which form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity—that is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly, or form less ozone; therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists these negligibly reactive compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOC.

The CAA requires the regulation of VOCs for various purposes. Section 302(s) of the CAA specifies that the EPA has the authority to define what this term means, and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the VOC definition was first set forth in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented most recently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (Interim Guidance) (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The reaction rate constant (known as k_{OH}) with the hydroxyl radical (OH); (ii) the maximum incremental reactivities (MIR) of ethane and the compound in question expressed on a reactivity per mass basis; and (iii) the MIR of ethane and the compound in question expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The k_{OH} is the reaction rate constant of the compound with the OH radical in the air. This reaction is typically the first step in a series of chemical reactions by which a compound breaks down in the air and participates in the ozone-forming process. If this step is slow, the compound will likely not form ozone at a very fast rate. The k_{OH} values have long been used by the EPA as a measure of photochemical reactivity and ozone-forming activity, and they have been the basis for most of the EPA's previous exclusions of negligibly reactive compounds. The k_{OH} metric is inherently a molar comparison, i.e., it measures the rate at which molecules react.

The MIR values, both by mole and by mass, are a more recently developed measure of photochemical reactivity derived from a computer-based photochemical model. This measurement considers the complete ozone forming activity of a compound, not merely the first reaction step. Further explanation of the MIR metric can be found in: W. P. L. Carter, ''Development of Ozone Reactivity Scales for Volatile Organic Compositions,'' Journal of the Air & Waste Management Association, Vol. 44, 881–899, July 1994.

The MIR values for compounds are typically expressed as grams of ozone formed per gram of VOC (mass basis), but may also be expressed as grams of ozone formed per mole of VOC (molar basis). For comparing the reactivities of two compounds, using the molar MIR values considers an equal number of molecules of the two compounds. Alternatively, using the mass MIR values compares an equal mass of the two compounds, which will involve different numbers of molecules, depending on the relative molecular weights. The molar MIR comparison is consistent with the original smog chamber experiments that underlie the original selection of ethane as the threshold compound and compared equal molar concentrations of individual VOCs. It is also consistent with previous reactivity determinations based on inherently molar k_{OH} values. By contrast, the mass MIR comparison is more consistent with how MIR values and other reactivity metrics have been applied in reactivity-based emission limits, such as the national VOC emissions standards for aerosol coatings (73 FR 15604). Many other VOC regulations contain limits based upon a weight of VOC per volume of product, such as the EPA's regulations for limiting VOC emissions from architectural and industrial maintenance coatings (65 FR 7736). However, the fact that regulations are structured to measure VOC content by weight for ease of implementation and enforcement does not necessarily control whether VOC exemption

decisions should be made on a weight basis as well.

The choice of the molar basis versus the mass basis for the ethane comparison can be significant. Given the relatively low molecular weight of ethane, use of the mass basis tends to result in more VOCs being classified as ''negligibly reactive'' than in the case of the molar basis. In some cases, a compound might be considered less reactive than ethane and eligible for VOC exemption under the mass basis but not under the molar basis.

In this proposed action, the EPA relies on the k_{OH} metric because of the availability of relevant data. No reported calculations of MIR values on a molar or mass basis were found for these compounds. Thus, the EPA relies on the k_{OH} metric.

The EPA's 2005 Interim Guidance also notes that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than ozone concentrations, including fine particle formation, air toxics exposures, stratospheric ozone depletion, and climate change. The EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the agency continues to believe that the impacts of VOC exemptions on environmental endpoints other than ozone formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS, and questions have been raised as to whether the agency has authority to use its VOC policy to address concerns that are unrelated to ground-level ozone. Thus, in general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to ozone formation. However, if the agency determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, the EPA reserves the right to exercise its judgment in deciding whether to grant an exemption.

In this case, the agency has examined available information on the risks to human health and the environment and applicability of other regulatory programs; that information for the four compounds considered here is discussed further in Section III.

B. Petitioned Compounds To List as Negligibly Reactive: HCF_2OCF_2H (HFE 134), $HCF_2OCF_2OCF_2H$ (HFE-236cal2), $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13), and $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180))

On February 10, 2005, Solvay Solexis, Incorporated submitted to the EPA a petition requesting that four compounds in the family of products known by the trade name H-Galden be added to the list of compounds that are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). These four compounds—HCF_2OCF_2H (HFE-134), $HCF_2OCF_2OCF_2H$ (HFE-236cal2), $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13), and $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180))—can be used in some heat transfer applications (as refrigerants) and as fire suppressants.

In both the refrigeration and fire suppressant end uses, these HFPEs would be used as substitutes for ozone-depleting substances (ODS) and thus have either undergone or would need to undergo review by the EPA's Significant New Alternatives Policy (SNAP) Program. The SNAP Program is EPA's program to evaluate and regulate substitutes for the ozone-depleting chemicals that are being phased out under the stratospheric ozone protection provisions of the CAA. In Section 612(c) of the CAA, the agency is authorized to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances.[1] The EPA's SNAP program has evaluated the use of H-Galden HFPEs and found acceptable their use as fire suppressants in non-residential applications, in place of Halon 1211 (68 FR 4004, January 27, 2003). However, the SNAP program has not approved H-Galden HFPEs for certain other uses (i.e., solvent, aerosol propellant, foam blowing, and refrigeration). There currently is no submission pending review to list these substances as substitutes in other uses. Thus, at this time, it would be a violation of the CAA and the SNAP program regulations for any person to introduce H-Galden HFPEs into interstate commerce for use in other end uses regulated by the SNAP program. H-Galden HFPEs may be used in non-mechanical heat transfer as a secondary refrigerant in secondary-loop refrigeration systems without approval from SNAP; the EPA does not list, and does not currently require notification for, compounds that are used only as a secondary fluid in secondary-loop refrigeration systems (62 FR 10702; March 10, 1997).

With respect to the photochemical reactivity of the H-Galden compounds, Solvay Solexis, Incorporated provided information on the photochemical reactivity of its chemical compounds as measured by each compound's k_{OH} rate constant. Measurements of the reaction rate of HCF_2OCF_2H (HFE-134) with OH have been estimated at 298 K to be 2.9×10^{-15} (cm^3/molecule-sec). This rate constant is highly temperature dependent and decreases at lower temperatures. The calculated reaction rates for the three additional HFPEs submitted by Solvay Solexis are 2.4×10^{-15} (cm^3/molecule-sec) for HFE-236cal2, $4.7\times10-15$ (cm^3/molecule-sec) for HFE-338pcc13, and 4.9×10^{-15} (cm^3/molecule-sec) for H-Galden 1040X. The k_{OH} values for these four HFPEs are significantly lower than the reaction rate for ethane which has a k_{OH} value of 2.4×10^{-13} (cm^3/molecule-sec) at 298 K.

The scientific information that the petitioner submitted in support of the petition has been added to the docket for this rulemaking. This docketed information includes journal articles where the rate constant values can be found. Solvay Solexis, Incorporated submitted the following articles in support of its petition: (1) ''Tropospheric Degradation Products of Novel Hydrofluoropolyethers,'' Tuazon, *Environmental Science & Technology,* University of California, Riverside, May 1997; (2) ''Hydrofluoropolyethers,'' Marchionni, Silvani, Fontana, Malinverno, Visca, *Journal of Fluorine Chemistry,* Ausimont SpA, R & D Centre, 1999; and (3) ''Toxicological Profile of Hydrofluoropolyethers,'' Malinverno, Colombo, Visca, *Regulatory Toxicology and Pharmacology,* December, 2004.

Information in the Solvay Solexis, Incorporated petition and its reference material indicates that the four HFPEs have low acute toxicity, no irritation or skin sensitization, and no detectable genotoxic activity *in vitro* or *in vivo.* The HFPEs show a similarly low potential for developmental toxicity. This toxicity information has been placed in the docket for this rulemaking.

III. The EPA Response to the Petition

Consistent with the Interim Guidance, the EPA's proposed response to the petition is based on a consideration of the contribution that each chemical makes to tropospheric ozone formation based on a comparison of reactivity metrics, and our assessment that existing programs or policies already adequately address the possibility that

[1] Information on the SNAP program can be found on the following Web page: *www.epa.gov/ozone/snap.*

granting the petition would pose a significant risk to human health or the environment. Information on these topics is given below.

A. Contribution to Tropospheric Ozone

Table 1 summarizes the information provided by the petitioner regarding the photochemical reactivity of the compounds under consideration. The data submitted by the petitioner support the contention that the reactivity of these compounds, with respect to reaction with the OH radical in the atmosphere, is lower than that of ethane.

TABLE 1—SUMMARY OF REACTION RATES WITH OH (k_{OH}) REACTION RATE CONSTANT COMPARED TO ETHANE

Chemical formula	CAS No.	Name	k_{OH} (cm^3/(molecule-sec)) [1]	k_{OH} ratio relative to ethane
C_2H_6	74–84–0	ethane	$2.4x10^{-13}$	1.00
HCF_2OCF_2H	1691–17–4	HFE-134	$2.3x10^{-15}$	0.01
$HCF_2OCF_2OCF_2H$	78522–47–1	HFE-236ca12	$2.4x10^{-15}$	0.01
$HCF_2OCF_2CF_2OCF_2H$	188690–78–0	HFE-338pcc13	$4.7x10^{-15}$	0.02
$HCF_2OCF_2OCF_2CF_2OCF_2H$	188690–77–9	H-Galden 1040X	$4.9x10^{-15}$	0.02

Note: [1] K Tokuhashi et al., *Journal of Physical Chemistry A,* 104, 1165 (2000).

B. Likelihood of Risk to Human Health or the Environment

Additionally, we examined and present available information on the likelihood of risk to human health or the environment from increased use of the chemicals considered here. We believe that current regulation of these compounds under other EPA programs adequately protects human health and the environment.

The EPA's SNAP program has reviewed the potential impacts of the H-Galden HFPEs on human health and the environment, including stratospheric ozone depletion and global warming potential (GWP). From a human health standpoint, use of HFPEs as a streaming agent fire suppressant in non-residential applications does not pose a significant risk as compared to other available substitutes with the same end use. Because HFPEs do not contain chlorine or bromine, these compounds do not contribute to the depletion of the ozone layer and have ozone depletion potential values of zero. These HFPEs have significant GWPs, comparable to those for hydrofluorocarbons also used as fire suppressants. The SNAP program listed H-Galden HFPEs as acceptable substitutes for Halon 1211 subject to narrowed use limits (for use only in non-residential applications) because they reduce overall risk to human health and the environment in the listed end use and application (68 FR 4004, January 27, 2003).

Table 2 shows the 20 and 100 year GWPs of these four compounds relative to carbon dioxide (CO_2) as reported by the Intergovernmental Panel on Climate Change. These GWP–100 levels are comparable to mid-range levels associated with some chemical compounds that have previously been exempted from the VOC definition, which range from 23 to 12,000. We invite the public to submit comments and additional information relevant to this issue and whether such information should be considered in connection with the decision to grant an exemption from the regulatory definition of VOC.

TABLE 2—SUMMARY OF GLOBAL WARMING POTENTIALS RELATIVE TO CO_2 OVER 20 AND 100 YEARS FOR THE FOUR COMPOUNDS BEING CONSIDERED FOR VOC EXEMPTIONS

Chemical formula	CAS No.	Name	GWP relative to CO_2 (20 years) [1]	GWP relative to CO_2 (100 years)
HCF_2OCF_2H	1691–17–4	HFE-134	12200	6320
$HCF_2OCF_2OCF_2H$	78522–47–1	HFE-236ca12	8000	2800
$HCF_2OCF_2CF_2OCF_2H$	188690–78–0	HFE-338pcc13	5100	1500
$HCF_2OCF_2OCF_2CF_2OCF_2H$	188690–77–9	H-Galden 1040X	6320	1870
CO_2	124–38–9	Carbon dioxide	1	1

Note: [1] Forster, P., V. Ramaswamy, P. Artaxo, T. Berntsen, R. Betts, D.W. Fahey, J. Haywood, J. Lean, DC Lowe, G. Myhre, J. Nganga, R. Prinn, G. Raga, M. Schulz and R. Van Dorland, 2007: Changes in Atmospheric Constituents and in Radiative Forcing. *In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

C. Conclusion

In summary, for all four compounds, the EPA believes that (a) these chemicals qualify as negligibly reactive with respect to their contribution to tropospheric ozone formation, and (b) any non-tropospheric ozone-related risks associated with potential increased use are adequately addressed by other existing programs and policies. We invite the public to submit comments and additional information relevant to the issue of these compounds' overall risks and benefits to human health and the environment, and on whether such information should be considered in connection with the decision to grant an exemption from the regulatory definition of VOC.

IV. Proposed Action

The EPA hereby proposes to amend its definition of VOC at 40 CFR 51.100(s) to exclude a group of four HFPE's identified as HCF_2OCF_2H (known as HFE-134), $HCF_2OCF_2OCF_2H$ (known as HFE-236cal2), $HCF_2OCF_2CF_2OCF_2H$ (known as HFE-338pcc13), and $HCF_2OCF_2OCF_2CF_2OCF_2H$ (known as H-Galden 1040X and also H-Galden ZT 130 (or 150 or 180)) as VOCs for ozone SIP and ozone control purposes. If an entity uses or produces any of these four HFPE compounds and is subject to the

EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the ozone NAAQS, then the compound will not be counted as a VOC in determining whether these regulatory obligations have been met. This action may also affect whether any of these four HFPE compounds are considered as VOCs for state regulatory purposes to reduce ozone formation, if a state relies on the EPA's definition of VOC. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, if this action is made final, states may not take credit for controlling these compounds in their ozone control strategies.

The EPA is also proposing to make certain technical corrections to the current list of exempt compounds at 40 CFR 51.100(s)(1) by replacing several commas separating individual compounds with semicolons and by removing the erroneous ''(1)'' notation in ''(1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)'' so that it reads ''1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)''.

V. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action addresses the exemption of a set of chemical compounds from the VOC definition. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with the EPA policy to promote communications between the EPA and Tribal governments, the EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. While this proposed rule is not subject to the Executive Order, the EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856–38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent the chemical compound may affect children's health. The EPA has placed the available data regarding the health effects of this chemical compound in Docket No. EPA–HQ–OAR–2007–0089.

The public is invited to submit comments or identify peer-reviewed studies and data, of which the EPA may not be aware, that assess results of early life exposure to the chemical compounds herein.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes to revise the EPA's definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, with explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2012.

Lisa P. Jackson,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

§ 51.100 [Amended]

2. In § 51.100 in paragraph (s)(1) introductory text, remove the words ''methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3, HFE-7000), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), methyl formate (HCOOCH3), (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy- 4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:'' and add in their place the words ''methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3, HFE-7000); 3-ethoxy- 1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH3); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy- 4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; HCF_2OCF_2H (HFE134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); and perfluorocarbon compounds which fall into these classes:''

[FR Doc. 2012–6911 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0544; FRL–9651–8]

RIN 2060–AQ40

National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: On February 14, 2012, EPA proposed amendments to the national emission standards for hazardous air pollutants for secondary aluminum production (77 FR 8576). The EPA is extending the deadline for written comments on the proposed amendments by 14 days to April 13, 2012. The EPA received a request for an extension from the Aluminum Association. The Aluminum Association has requested the extension in order to allow more time to review the redlined of the original rule and the proposed revisions, as well as review the test data for Group I furnaces.

DATES: *Comments.* The public comment period for the proposed rule published February 14, 2012, (77 FR 8576) is being extended for 14 days to April 13, 2012, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

World Wide Web. The EPA Web site for this rulemaking is at: *http://www.epa.gov/ttn/atw/.*

FOR FURTHER INFORMATION CONTACT: Ms. Rochelle Boyd, Metals and Inorganic Chemicals Group (D243–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–

1390; Fax number (919) 541–3207; Email address: *boyd.rochelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

Due to requests received from industry to extend the public comment period, the EPA is extending the public comment period for an additional 14 days. Therefore, the public comment period will end on April 13, 2012, rather than March 30, 2012.

How can I get copies of this document and other related information?

The EPA has established the official public docket No. EPA–HQ–OAR–2010–0544. The EPA has also developed a Web site for the proposed rulemaking at the addresses given above.

Dated: March 20, 2012.

Gina McCarthy,

Assistant Administrator.

[FR Doc. 2012–7029 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–0776; FRL–9651–2]

RIN 2060–AR20

Protection of Stratospheric Ozone: Amendment to HFO–1234yf SNAP Rule for Motor Vehicle Air Conditioning Sector

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise one of the use conditions required for use of hydrofluoroolefin (HFO)-1234yf (2,3,3,3-tetrafluoroprop-1-ene), a substitute for ozone-depleting substances (ODSs) in the motor vehicle air conditioning end-use within the refrigeration and air conditioning sector, as acceptable subject to use conditions under the EPA's Significant New Alternatives Policy (SNAP) program. The revised use condition incorporates by reference a revised standard from SAE International. In the ''Rules and Regulations'' section of this **Federal Register,** we are revising a use condition for use of HFO-1234yf in motor vehicle air conditioning as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by April 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0776 by mail to OAR Docket and Information Center, U.S. Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number (202) 343–9163, fax number, (202) 343–2338; email address at *sheppard.margaret@epa.gov*. The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs*. The full list of SNAP decisions in all industrial sectors is available at *http://www.epa.gov/ozone/snap*.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This action proposes revising a use condition for the refrigerant HFO–1234yf in motor vehicle air conditioning under EPA's Significant New Alternatives Policy (SNAP) program. This action would incorporate by reference an updated edition of a standard from SAE International and clarifying the scope of the use condition. We have published a direct final rule which revises a condition for use of HFO-1234yf in motor vehicle air conditioning in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment and no requests for public hearings in response to this action, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

This notice of proposed rulemaking (NPRM) would regulate the use of HFO-1234yf (2,3,3,3-tetrafluoroprop-1-ene, Chemical Abstracts Service Registry Number [CAS Reg. No.] 754–12–1) as a refrigerant in new motor vehicle air conditioning (MVAC) systems in new passenger cars and light-duty trucks. Businesses in this end-use that might want to use HFO-1234yf in new MVAC systems in the future include:

- Automobile manufacturers
- Automobile repair shops

Regulated entities may include:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS code	Description of regulated entities
Industry	336111	Automobile Manufacturing.
Services	811111	General Automotive Repair.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

III. What is EPA proposing?

EPA is proposing to revise one of the use conditions required for use of hydrofluoroolefin (HFO)-1234yf (2,3,3,3-tetrafluoroprop-1-ene), a substitute for ozone-depleting substances (ODSs) in the motor vehicle air conditioning end-use under EPA's Significant New Alternatives Policy

(SNAP) program. In March 2011, EPA listed HFO-1234yf as acceptable, subject to use conditions, for use in motor vehicle air conditioning (MVAC) systems in new passenger cars and light-duty trucks (March 29, 2011; 76 FR 17488). We are revising the use condition that incorporated by reference the February 2011 edition of SAE International's [1] (herein after, SAE) J2844 standard for connections with refrigerant containers. We are revising this use condition to incorporate by reference an updated edition of the standard, and we also are clarifying the scope of that use condition. This action does not place any significant burden on the regulated community and ensures consistency with industry standards. The direct final rule will be effective on May 22, 2012 without further notice unless we receive adverse comment (or a request for a public hearing) by April 23, 2012. If EPA receives adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Margaret Sheppard in two versions: one clearly marked ''Public'' to be filed in the public docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only.

IV. Statutory and Executive Order Reviews

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'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. It contains no new requirements for reporting. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.08). This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule because this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; for NAICS code 336111 (Automobile manufacturing), a small business has <1000 employees; and for NAICS code 811111 (General Automotive Repair), a small business has annual receipts of less than $7.0 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities beyond current industry practices. Today's action effectively ensures consistency with current industry practices and standards, whereas without these revisions, small businesses would need to reconcile differences between EPA regulations and industry standards.

It is not clear that there would be any cost differential between these new unique fittings, those used with the current automotive refrigerant, HFC-134a, or other fittings that the automotive industry could adopt instead. It is possible that the fittings required in the revised use condition will be less expensive because they are a standard shape and size easily produced in a metal-working shop. Thus, cost impacts of this proposed rule on small entities are expected to be small. This proposed rule is expected to relieve burden for some small entities, such as automotive repair shops, by avoiding confusion over which fittings to use and by using a more robust fitting that allows quick detection of any leaks from the valve.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA has worked together with SAE International and with groups representing professional service technicians such as the Mobile Air Conditioning Society Worldwide, which conducts regular outreach with technicians and owners of small businesses such as retail refrigerant suppliers and automobile repair shops.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule will not impose any requirements beyond current industry practices, and thus, compliance costs are expected to be small. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The requirements of this rule apply to the servicing of motor vehicle air conditioning systems. The requirements of this rule for unique fittings are expected to be comparable in cost to those of current fittings. Requirements would be the same as those imposed on any other entity performing servicing on motor vehicle air conditioning systems.

[1] Formerly, the Society of Automotive Engineers.

E. Executive Order 13132: Federalism

This proposed 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, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not economically significant as defined in Executive Order 12866, and the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action concerns only use of a specific fitting that may reduce technician's exposure in the course of professional servicing of MVAC systems. Therefore, we did not conduct further health or risk assessments beyond those in the original rulemaking (March 29, 2011; 76 FR 17488). This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HFO-1234yf.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA proposes to use SAE International's most recent version of the SAE J2844 standard, ''R-1234yf (HFO-1234yf) New Refrigerant Purity and Container Requirements for Use in Mobile Air-Conditioning Systems.'' This standard can be obtained from *http://www.sae.org/technical/standards/*. This standard addresses, among other things, appropriate fittings and other requirements for refrigerant containers for use for professional servicing of MVAC systems using the alternative refrigerant HFO-1234yf.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule requires specific use conditions for unique fittings for use with refrigerant containers for professional servicing of MVAC systems, for those servicing MVAC systems using this low global warming potential refrigerant alternative. It does not directly affect the amount of exposure to or emissions of HFO-1234yf expected.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 15, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–6918 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 171

[EPA–HQ–OPP–2010–0670 and EPA–HQ–OPP–2011–0049; FRL–9341–1]

RIN 2070–AJ80 and 2070–AJ77

Notification of Submission to the Secretary of Agriculture of Two Draft Regulatory Documents Under FIFRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA has forwarded to the Secretary of the United States Department of Agriculture (USDA) two draft final rules. The first final rule is entitled: ''Pesticides; Microbial Pesticide Definitions and Applicability; Clarification and Availability of Test Guideline''; and the second is entitled: ''Synchronizing the Expiration Dates of the Pesticide Applicator Certificate with the Underlying State or Tribal Certificate Final Rule''. The draft regulatory documents are not available to the public until after they have been signed and made available by EPA.

ADDRESSES: EPA has established a docket for the corresponding proposed rules under docket identification (ID) numbers EPA–HQ–OPP–2010–0670 and EPA–HQ–OPP–2011–0049. All documents in the docket are listed in the docket index available in *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rose Kyprianou, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703 305–5354; email address: *kyprianou.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA, 7 U.S.C. 136w, requires EPA to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rules are not available to the public until after they have been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rules within 15 days after receiving them, EPA shall include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and EPA's response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rules, the EPA Administrator may sign the final rules for publication in the **Federal Register** any time after the 15-day period.

II. Do any statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submissions to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Parts 158 and 171

Environmental protection, Administrative practice and procedure; Agricultural commodities, Indian—lands, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012–6929 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120309176–2174–01]

RIN 0648–BB56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 18A

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would update the current rebuilding strategy for black sea bass, modify the current system of accountability measures for black sea bass, limit effort in the black sea bass segment of the snapper-grouper fishery, and improve fisheries data in the for-hire sector of the snapper-grouper fishery. The intent of this rule is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

DATES: Written comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0282'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0282'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0282'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 18A may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.* Amendment 18A includes an Environmental Impact Statement, an Initial Regulatory Flexibility Act Analysis (IRFA), a Regulatory Impact Review, and a Fishery Impact Statement.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at *OIRA Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Kate Michie, 727–824–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) for federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving OY from the fishery, and to minimize bycatch and bycatch mortality to the extent practicable.

The black sea bass segment of the snapper-grouper fishery in the South Atlantic is managed through a variety of measures to achieve OY. These measures include restrictions on the total harvest, recreational and commercial allocations, recreational and commercial annual catch limits (ACLs), and accountability measures (AMs). A new stock assessment for black sea bass was completed in October 2011, and indicates the stock is no longer overfished but is not yet fully rebuilt. As overfishing ends for black sea bass, and biomass increases, the sector specific ACLs are likely to be met earlier each fishing season as a result of the increased availability of the stock for harvest. This can increase the likelihood of derby-style harvesting, which is undesirable from economic, vessel safety, and social perspectives. Derby-style harvesting, also termed ''the race for fish,'' consists of a short duration of increased effort where harvest is maximized prior to reaching an ACL. Additionally, effort shifting into the black sea bass segment of the snapper-grouper fishery increased as more stringent restrictions were placed on other snapper-grouper species. This resulted in sector ACLs being reached relatively early in their fishing seasons. During the June 2009 to May 2010 fishing year, the commercial quota was met in December 2009. During the June 2010 to May 2011 fishing year, the commercial quota was met in October 2010, and during the June 2011 to May 2012 fishing year, the commercial quota was met in July 2011.

Currently, the black sea bass rebuilding plan specifies a constant catch rebuilding strategy as the stock rebuilds, which also contributes to increased rates of harvest and early in-season closures as fish become more available through rebuilding efforts. In an effort to extend fishing opportunities for black sea bass further into the fishing year, and to improve fisheries data reporting in the for-hire sector of the snapper-grouper fishery, the Council voted to approve Amendment 18A at its December 2011 meeting.

Measures Contained in This Proposed Rule

This rule would modify the black sea bass rebuilding strategy, acceptable biological catch (ABC), and ACL; limit participation in the black sea bass pot segment of the snapper-grouper fishery through an endorsement program; establish an appeals process for fishermen excluded from the black sea bass pot endorsement program; limit the number of pot tags issued to participants in the black sea bass pot segment of the snapper-grouper fishery; implement measures to reduce black sea bass bycatch; modify AMs for black sea bass; establish a commercial trip limit for black sea bass; modify the current commercial and recreational size limits; and improve data reporting in the for-hire sector of the snapper-grouper fishery.

Black Sea Bass Rebuilding Strategy

In October 2011, a new benchmark stock assessment (SEDAR 25) was completed for black sea bass. Results of the new stock assessment indicate that the stock is no longer overfished but is not yet rebuilt. The biomass of the stock is above the minimum stock size threshold (MSST), which is the level that triggers an overfished determination. However, stock size of black sea bass is below the biomass level at which the stock is considered to be rebuilt (B_{MSY}). Furthermore, the stock is undergoing overfishing to a minor degree based on 2009 and 2010 data.

The Council's Scientific and Statistical Committee (SSC) met in November 2011 to review SEDAR 25. The SSC determined that the assessment represented the best scientific information available.

Information provided to the SSC indicated the commercial ACL for 2011 of 309,000 lb (140,200 kg), gutted weight; 364,620 lb (165,389 kg), round weight; had been exceeded by about 5 percent, and the recreational ACL for 2011 had been exceeded by at least 10 percent. However, because 2 months of recreational data from 2011 were not available, the SSC supported an ABC which assumes 150 percent of the allowable catch will be met in the 2011/2012 fishing year. Furthermore, the SSC stated that the ABC should be specified for only the 2012/2013 and 2013/2014 fishing seasons. The SSC indicated that an assessment update should be conducted before any adjustments are made to the ACL after the 2013/2014 fishing season.

Based on the SSC's recommendations, the Council chose, and NMFS proposes, to modify the current constant catch rebuilding strategy to a rebuilding strategy that holds catch constant at the ABC in fishing years 2012/2013 and 2013/2014, and then changes to $F_{rebuild}$ in 2014/2015. $F_{rebuild}$ is defined as a constant fishing mortality strategy that maintains a 66-percent probability of recovery rate throughout the remaining fishing seasons of the rebuilding timeframe. After the 2014/2015 fishing season the fishing mortality rate would be held constant until modified. Switching to a constant fishing mortality strategy would allow the ABC and ACL to increase over time. However, if the combined ACL is exceeded in a year when there is no assessment, the combined ACL would not automatically increase the following year.

This rule proposes a new ACL definition for black sea bass. ACL = ABC = OY. The combined ACL would be 847,000 lb (384,192 kg), round weight; 718,000 lb (325,680 kg), gutted weight; which would be divided into sector ACLs based on the current allocation formula implemented through the final rule for Amendment 13C to the FMP (71 FR 55096, September 21, 2006). The commercial allocation is 43 percent of the combined ACL and the recreational allocation is 57 percent of the combined ACL. Therefore, the commercial ACL would be set at 309,000 lb (140,160 kg), gutted weight; 364,620 lb (165,389 kg), round weight; and the recreational ACL would be set at 409,000 lb (185,520 kg), gutted weight; 482,620 lb (218,913 kg), round weight; for the 2012/2013 and

2013/2014 fishing years. Thereafter, a stock assessment update would be completed to determine if an increase in the ACL is appropriate for the following fishing year.

Black Sea Bass Pot Endorsement Program

The Council is concerned increased restrictions imposed through Amendments 13C, 16, 17A, and 17B to the FMP, including a commercial quota for black sea bass, commercial quota for vermilion snapper, and seasonal closure for shallow-water groupers, could serve as an incentive for a greater number of fishermen with Federal snapper-grouper commercial permits to fish for black sea bass with pots. Currently, tags for black sea bass pots can be issued to any fisherman who possesses an Unlimited or 225-lb (102-kg) trip-limited Snapper-Grouper Permit. An increase in the number of individuals who fish black sea bass pots could increase the rate at which the quota is met and decrease profits for current participants in that black sea bass pot segment of the snapper-grouper fishery. Any increase in participation in the black sea bass pot segment of the fishery could also lead to earlier closures of black sea bass.

This rule includes a provision to limit participation in the black sea bass pot segment of the snapper-grouper fishery through the establishment of an endorsement program. In order to qualify for an endorsement, an entity must hold a valid South Atlantic Unlimited Snapper-Grouper Permit on the effective date of the final rule implementing Amendment 18A, if approved by the Secretary of Commerce. In addition to this requirement, qualifying permit holders must have average__annual__black sea bass landings of at least 2,500 lb (1,134 kg), round weight, using black sea bass pot gear between January 1, 1999 and December 31, 2010. Those permit holders with no reported commercial landings of black sea bass using black sea bass pot gear between January 1, 2008, and December 31, 2010, would be excluded from the endorsement program. The number of South Atlantic Unlimited Snapper-Grouper Permit holders that would be expected to meet these criteria is 31, if Amendment 18A is approved by the Secretary of Commerce. Only those vessels associated with a valid endorsement could legally fish for black sea bass in the South Atlantic using black sea bass pot gear.

The black sea bass fishing year begins June 1 and ends May 31, unless the quota is reached before that time. If approved, this action, combined with other management measures in this rule, would result in the commercial sector for black sea bass remaining open until July-September during the 2012/2013 fishing year, and until about the same time during the 2013/2014 fishing year. Thus, limiting effort is not likely to result in black sea bass pot fishing during the right whale calving season (November 1 through April 30).

If approved for implementation, the rule would place a 30-day freeze on transfers for qualifying South Atlantic Unlimited Snapper-Grouper Permits upon publication of the final rule in the **Federal Register**. This freeze on transfers is necessary to establish a stable universe of qualified permit holders to which black sea bass pot endorsements would be issued.

Individuals who believe they were incorrectly excluded from the black sea bass pot endorsement program would be given the opportunity to appeal their landings data during a 90-day appeals process to begin on the effective date of the final rule, if approved. The Regional Administrator (RA) would review, evaluate, and render final decisions on appeals. Hardship arguments would not be considered. The RA would determine the outcome of appeals based on NMFS logbooks. If NMFS logbooks are not available, the RA may use state landings records. Appellants would be required to submit documentation to support their appeal.

To further reduce the rate of harvest in the black sea bass pot segment of the snapper-grouper fishery, this rule also contains a provision to limit the number of black sea bass tags issued to each endorsement holder to 35 per vessel per permit year. NMFS would issue new trap identification tags each permit year that would replace the tags from the previous fishing year.

Black Sea Bass Pot Bycatch Reduction

Currently, the only restriction for removing black sea bass pots from the water is reaching the commercial quota. Therefore, pots are left in the water for multiple days, which can result in unintended black sea bass catch, also called ''ghost fishing.'' Leaving pots in the water for multiple days also increases the chance that pots can be lost and that vertical lines (i.e., buoy lines) can entangle protected species. The longer the pots are left in the water, the greater the opportunity for lost pots, ghost fishing, and entanglement with protected species.

This rule contains a provision to require that all black sea bass pots be brought back to shore at the conclusion of each trip. The pots may remain on the vessel, but the vessel must be returned to a dock, berth, beach, seawall or ramp. Increasing harvest over time through the selected rebuilding strategy could result in longer commercial seasons. Reductions in the amount of time vertical lines remain in the water, especially during right whale calving season, from November 1–April 30, is likely to reduce the risk of whale entanglements with black sea bass pots.

Black Sea Bass AM Modifications

The final rule for Amendment 17B to the FMP implemented commercial and recreational AMs for black sea bass (75 FR 82280, December 30, 2010). Subsequent to the implementation of Amendment 17B, the Council determined the system of AMs under Amendment 17B may not be the most appropriate way to constrain harvest at or below the sector ACLs. Therefore, at its June 2011 meeting, the Council requested that AMs for black sea bass be re-examined in Amendment 18A.

The current recreational AMs would close the recreational sector only if black sea bass are overfished and the recreational ACL is projected to be met. This rule would modify these AMs to state that the recreational sector would close *regardless* of the overfished status of black sea bass when the recreational ACL is projected to be met. This rule would also modify the commercial sector AMs for black sea bass to match the recreational sector AMs by giving the RA the authority to payback commercial ACL overages, regardless of stock status, by publishing a notification in the **Federal Register** to reduce the commercial ACL in the following season by the amount of the overage. However, for both the recreational and commercial sectors, ACL paybacks are not required when new projections are adopted that incorporate ACL overages and the ACLs are adjusted in accordance with those projections.

Additionally, the current recreational black sea bass AMs use a 3-year running average of landings to determine ACL overages in the recreational sector. This rule would remove the use of the 3-year running average of landings from the recreational AMs for black sea bass and base the ACL overage on a single year of landings only.

Black Sea Bass Commercial Trip Limit

The black sea bass commercial quota was met early in the 2009, 2010, and 2011 fishing years. The increase in landings during recent fishing years appears to be the result of increased effort and increased catch per trip. There was also an increase in the number of trips that caught black sea bass with other gear types

(predominantly hook-and-line). In an effort to slow the rate of commercial harvest of black sea bass and extend fishing opportunities further into the fishing year, this rule would limit commercial harvest to 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight; per vessel per day. This action, combined with the proposed endorsement program and other management measures in this rule, should result in the commercial fishing season remaining open until sometime between July and September.

Black Sea Bass Minimum Size Limit Modifications

In order to decrease harvest of black sea bass in the commercial and recreational sectors, this rule would increase the recreational minimum size limit from 12 inches (30 cm), total length (TL), to 13 inches (33 cm), TL, and increase the commercial size limit from 10 inches (25 cm), TL, to 11 inches (28 cm), TL. NMFS expects that these modifications would result in a 21–23 percent decrease in harvest in the for-hire sector, a 19–20 percent decrease in harvest in the private recreational sector, and a 9.3 percent reduction in harvest in the commercial sector. Though increasing the minimum size limit would result in increased regulatory discards, bycatch mortality in the black sea bass segment of the snapper-grouper fishery is very low, and regulatory discards are unlikely to contribute to overfishing or jeopardize rebuilding efforts.

Data Collection Improvements in the For-Hire Sector of the Snapper-Grouper Fishery

Currently, charter vessels and headboats with a South Atlantic Charter/Headboat Permit for Snapper-Grouper must report landings information, if selected to report by the NMFS Science and Research Director (SRD), and most do so via paper logbooks. However, charter vessels and headboats, who are selected to report by the SRD, must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Some charter vessels have been selected to report landings information; however, none have been selected to report electronically thus far. On the other hand, all headboats are currently reporting landings information, and some of these headboats are reporting electronically. Headboats are required to report on a monthly basis and charter vessels are required to report on a weekly basis. The reporting frequency and lag between the time paper logbooks are completed and mailed to the NMFS Southeast Fisheries Science Center (SEFSC), and the time SEFSC staff receives and processes the data, makes real-time/in-season fishery management difficult. Electronic logbooks have the potential to automatically collect information on date, time, location, and fishing times. Information (e.g. species, length, and disposition) of released species can be entered into the system at the end of a fishing event. If the electronic format prompts a fisherman to record data as bycatch occurs, an electronic logbook may provide better estimates of bycatch than a paper logbook. This rule would require vessels holding Federal South Atlantic Charter/Headboat Permits for Snapper-Grouper to report electronic logbook information on a weekly or daily basis.

Other Measures Contained in the Amendment

Overfishing Criteria for Black Sea Bass

In addition to the provisions included in this rule, Amendment 18A defines overfishing criteria for black sea bass. For black sea bass, overfishing would be determined on an annual basis by the maximum fishing mortality threshold (MFMT) and the overfishing limit (OFL). The estimate of F_{MSY} (MFMT) for black sea bass from the most recent stock assessment (SEDAR 25) is 0.698, while the corresponding OFL values increase as the stock rebuilds through the 2016 fishing year. If either the MFMT (during an assessment year) or the OFL method (during a non-assessment year) is exceeded, the stock would be considered to be undergoing overfishing.

ACT for Black Sea Bass

Amendment 18A also contains an action to establish an annual catch target (ACT) for the recreational sector for black sea bass. The ACT would equal the recreational ACL*(1–PSE) or recreational ACL*0.5, whichever is greater. The recreational ACT would be 357,548 lb (162,180 kg) gutted weight; 421,907 lb (191,400 kg), round weight; for the 2012/2013 and 2013/2014 fishing seasons. After that time, a stock assessment update would be completed to determine if the recreational ACT should be modified. The recreational ACT would not be associated with preventative or corrective management measures. Rather it would be used as a management reference point used to measure the efficiency of existing and new management measures for black sea bass.

Transferability of Black Sea Bass Endorsements

Amendment 18A contains an action to allow for the transfer of black sea bass endorsements. However, NMFS is unable to propose implementing this action at this time. The document identifies the wrong preferred alternative selected for this action, and there are discrepancies in the record regarding the Council's discussion of the alternatives and the text describing and analyzing this alternative in Amendment 18A. The decision not to propose implementation of the transferability action was made to reduce public confusion and to provide the Council the opportunity to clarify its intent. The Council may decide how to proceed with transfers of black sea bass endorsements in a future action.

Other Changes to Codified Text

This rule also proposes to revise codified text in § 622.4, regarding the naming of rock shrimp permits, which was inadvertently not revised in a previous final rule. The final rule for South Atlantic Shrimp Amendment 7 (74 FR 50699, October 1, 2009) implemented two permits for South Atlantic rock shrimp, namely a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) and a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ). These two permits replaced the commercial vessel permit for rock shrimp and the limited access endorsement for South Atlantic rock shrimp. However, references to a ''commercial vessel permit for rock shrimp'' occur twice in the regulations, namely, in § 622.4(a)(5)(i)(A) and (g)(1). This rule revises those paragraphs with the updated permit language.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, Amendment 18A, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, for this rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for the rule are

contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would modify the black sea bass rebuilding strategy, ABC, and ACL; limit participation in the black sea bass pot segment of the snapper-grouper fishery through an endorsement program; establish an appeals process for fishermen excluded from the black sea bass pot endorsement program; limit the number of pot tags issued to participants in the black sea bass pot segment of the snapper-grouper fishery; implement measures to reduce black sea bass bycatch; modify AMs for black sea bass; establish a commercial trip limit for black sea bass; modify the current commercial and recreational size limits; and improve data reporting in the for-hire sector of the snapper-grouper fishery.

The Magnuson-Stevens Act provides the statutory basis for this rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The proposed rule would introduce certain changes to current reporting, record-keeping, and other compliance requirements. In particular, a sample of the 1,985 vessels with for-hire snapper-grouper permits would be required to electronically report their harvest. To the extent that all headboats are currently subject to logbook reporting, the incremental professional skill needed under the new requirement would be relatively small. The incremental professional skill required of charterboats would be relatively higher since only a few selected by the SRD are required to submit trip information. About 10 percent of charter captains are now currently contacted on a weekly basis to collect trip level information.

NMFS expects the proposed rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2005–2010, an annual average of 247 vessels with valid permits to operate in the commercial snapper-grouper fishery landed black sea bass, generating dockside revenues of approximately $1.103 million (2010 dollars). Each vessel, therefore, generated an average of approximately $4,465 in gross revenues from black sea bass. Vessels that operate in the black sea bass segment of the snapper-grouper fishery may also operate in other snapper-grouper fisheries, the revenues of which are not reflected in these totals.

Based on revenue information, all commercial vessels affected by the proposed action can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire fishery, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the proposed action can be considered small entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and NMFS treats all vessels as independent entities in this analysis.

NMFS expects the proposed rule to directly affect all federally permitted commercial vessels harvesting black sea bass and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the proposed action would affect a substantial number of small entities.

NMFS considers all entities expected to be affected by the proposed rule as small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Modifying the rebuilding strategy and setting the ABC for black sea bass would retain the current economic status of small entities for the next 2 years of the rebuilding period. Thereafter, profits to small entities may increase with a shift from a constant catch strategy to a constant fishing mortality strategy that would allow the ABC to increase over time as long as the combined ACL (commercial and recreational) is not exceeded in the previous year.

Setting the ACL, ABC, and OY equal to one another would provide an economic environment that would allow small entities to maintain or increase their profits by way of maximizing their use of the black sea bass resource.

Establishing a black sea bass pot endorsement program would likely result in profit increases to those who would qualify and profit decreases to those who would not. Out of the 50 to 60 individuals that currently fish for black sea bass using pots, approximately 31 would qualify for the endorsement. Although those who would not qualify could still fish for black sea bass using other gear types, their harvest performance could suffer. Because a limited number of individuals could fish for black sea bass using pots under the endorsement program, the fishing season for the commercial sector would likely remain open longer than it has in the last few years. This could result in overall industry profits to increase or at least not deteriorate as it would without the endorsement program.

Establishing an appeals process for fishermen initially excluded from the black sea bass pot endorsement program would provide opportunities for those qualified to receive their endorsement. Given the narrow basis for appeals, only a limited number of appeals would likely be successful.

Limiting the number of pots per vessel would likely decrease the short-run profits of small entities. The proposed maximum number of 35 pots allowed per vessel is much lower than the current average of 45 pots per vessel fished, and would affect about 48 percent of the trips. Vessels would generate lower revenues per trip or higher overall fishing costs to maintain the same overall revenues. To the extent, however, that the endorsement program would limit the number of participants in the black sea bass pot segment of the snapper-grouper fishery, the overall industry profits may not substantially decrease as a result of the restrictions on the number of pot tags per vessel.

Requiring that black sea bass pots be brought back to shore at the conclusion

of each trip as a means to reduce bycatch may restrict the fishing operations of some vessels. Its effects on profits are relatively unknown, but NMFS notes that in approximately 65 percent of trips, pots are brought back to shore. If vessels undertake longer trips to allow their pots to fish longer, costs could rise because no restriction exists on the length of each trip. If this practice mainly results in maintaining the same revenues per trip, vessel profits could decrease. If, however, this requirement could effectively result in less ghost fishing and less interaction with protected species, future restrictions imposed on the fishery may also lessen, such that long-term profits of small entities would remain sustainable.

The recreational AMs, consisting of the in-season harvest and possession restriction if the recreational ACL is met or projected to be met and the post-season reduction in the sector's ACL if the recreational ACL is exceeded in the current year, would likely reduce the short-term profits of for-hire vessels. Similarly, the commercial AMs consisting of the in-season prohibition on the purchase and sale of black sea bass and the post-season reduction in the sector's ACL, would likely result in profit reductions to the commercial vessels. To the extent that this provision allows the rebuilding target to be reached within the rebuilding period, long-term profits to for-hire and commercial fishing operations would increase. In addition, the projected increases in the aggregate (commercial and recreational) ACL under the rebuilding strategy, as long as the prior year's combined ACL remains unexceeded, would tend to negate some or all of the adverse profit effects of the post-season AM applied on either the commercial or recreational sector. If either sector, but not both, exceeds its ACL in the current year, a post-season AM would apply to that sector. The combined commercial and recreational ACL, and therefore the sector ACLs, would still increase so long as the combined ACL remains unexceeded in the prior year.

Establishing a commercial vessel trip limit of 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), whole weight; would tend to adversely affect the catch and revenue per trip of vessels that generally land over this limit. Based on the 2010–2011 fishing season data, this alternative would adversely affect approximately 8.4 percent of trips accounting for a total of about 83,000 lb (37,648 kg), valued at about $203,000. NMFS notes, though, that this trip limit could lengthen the fishing season, allowing opportunities for some vessels to recoup some of their revenue losses for the year. At any rate, NMFS expects that some of these revenue reductions would filter into the bottom line of some vessels and potentially the bottom line of the entire industry. The actual extent of industry profit reduction cannot be estimated based on available information.

Increasing the recreational minimum size limit from 12 inches (30 cm), TL, to 13 inches (33 cm), TL, will potentially reduce the black sea bass harvests of headboats in the range of 20.9 percent to 22.6 percent and black sea bass harvests of other fishing modes from 18.8 percent to 20.3 percent. These harvest reductions could lead to trip cancellations as the quality of fishing experience would decrease; on the other hand, these harvest reductions could happen only early in the fishing season but be recouped through additional trips with a lengthened season. The actual effects on for-hire vessel profits depend on whether there would be trip cancellations, which is uncertain based on available information.

Increasing the commercial size limit from 10 inches (25 cm), TL, to 11 inches (28 cm), TL, will potentially reduce the black sea bass harvests of commercial vessels by slightly over 9 percent. Actual reductions in harvest would partly depend on whether vessels take additional or longer trips to recoup potential harvest losses. Although additional or longer trips would maintain total revenues, either by maintaining the same harvest or by generating more revenue per fish since a bigger black sea bass generally commands a higher price, costs would also increase. The net effects on per vessel and industry profits cannot be determined with available information.

Requiring selected for-hire vessels to report electronically would affect some of the 1,985 vessels with for-hire snapper-grouper permits. This requirement would add costs to these vessels' operations. The incremental costs to selected headboats would not likely be as much as for charterboats because headboats are currently subject to logbook reporting. The incremental cost to selected charterboats would be higher as they are not currently subject to logbook reporting although NMFS now routinely contacts some charter captains to collect trip level information. The resulting effects to for-hire vessel profits are indeterminable.

Amendment 18A contains other provisions that could eventually have effects on the operations of small entities. First, as part of modifying the rebuilding strategy, overfishing for black sea bass will be determined on an annual basis using MFMT and OFL. This provision alone would not affect the profits of small entities. Second, an ACT for the recreational sector would account for management uncertainty in the recreational sector, related in part to the timely accounting of this sector's harvests. Currently, this ACT does not trigger application of AMs, so short-term profits to small entities would remain unaffected. If the Council decides in the future to use the ACT as the trigger for application of AMs, profits to small entities may be adversely affected. However, because this measure is designed to help ensure that the rebuilding strategy stays on track, long-term profitability would be sustainable.

In summary, the proposed rule would have both negative and positive effects on the profits of small entities, but its net effects on industry profits are indeterminable, as is a determination whether this rule would have a significant impact on the profits of small entities. Therefore, NMFS encourages commenters to provide input regarding the magnitude of effects on the profits of small entities.

Five alternatives, including the preferred alternative, were considered for modifying the rebuilding strategy and ABC. The first alternative, the no action alternative, would maintain the constant catch rebuilding strategy and current ABC throughout the rebuilding timeframe. This alternative would provide for a lower ABC over time, implying lower economic benefits than the preferred alternative. The second alternative would establish a new constant catch rebuilding strategy with a higher (than current) ABC throughout the remaining years of the rebuilding timeframe. Relative to the preferred alternative, the second alternative would provide for a higher ABC for 2 years but a lower ABC thereafter. The sum of economic benefits over the rebuilding timeframe under this alternative would be lower than that of the preferred alternative, primarily because the sum of annual ABCs under this alternative would be lower. In addition, a constant catch strategy, in general, would likely lead to the ACL being met sooner as the fish stock rebuilds, resulting in applications of in-season and post-season AMs. The third alternative, with two sub-alternatives, would establish a constant fishing mortality rebuilding strategy throughout the remaining years of the rebuilding timeframe. Under the first sub-alternative, the fishing mortality rate would be 75 percent of the fishing mortality at MSY (75-percent F_{MSY}), and under the second sub-alternative, the fishing mortality rate that would rebuild

the stock by 2016 ($F_{REBUILD}$ by 2016). These two sub-alternatives would provide for lower ABCs than the preferred alternative, and thus, lower economic benefits over time. The fourth alternative would maintain the current constant catch strategy and ABC for the next 2 years of the rebuilding timeframe and switch to a constant fishing mortality strategy at $F_{REBUILD}$ throughout the remainder of the rebuilding timeframe. This alternative would provide for the same ABC as the preferred alternative, but relates to a lower probability of rebuilding the stock to biomass at MSY.

Four alternatives, including the preferred alternative, were considered for modifying the ACL for black sea bass. The first alternative, the no action alternative, would maintain the existing ACL equal to ABC and OY equal to 75 percent of the fishing mortality at MSY. This alternative is more restrictive in setting OY as the underlying goal of managing the black sea bass stock. The second alternative would set the ACL equal to 90 percent of the ABC and the latter equal to OY. The third alternative would set the ACL equal to 80 percent of the ABC and the latter equal to OY. These other alternatives would provide for a lower ACL than the preferred alternative, and thus lower economic benefits as well.

Three alternatives, including the preferred alternative, were considered for establishing an endorsement program for the black sea bass pot segment of the snapper-grouper fishery. The first alternative, the no action alternative, would not establish an endorsement program. This alternative would continue to allow anyone with an Unlimited or 225-lb Limited Snapper-Grouper Permit to engage in the black sea bass pot segment of the snapper-grouper fishery. This would increase the likelihood of the derby-style fishing conditions, potentially dampening industry profitability. The second alternative includes seven sub-alternatives, of which one is the preferred sub-alternative that would set the minimum landings at 2,500 lb (1,134 kg), round weight, for eligibility in the endorsement program. The first sub-alternative would set the minimum landings at 500 lb (227 kg), round weight; the second sub-alternative, at 1,000 lb (454 kg), round weight; the third sub-alternative, at 2,000 lb (907 kg), round weight; the fourth, at 3,500 lb (1,588 kg), round weight; the fifth, at 5,000 lb (2,268 kg), round weight; and, the sixth, at 10,000 lb (4,536 kg), round weight. These sub-alternatives would allow varying numbers of individuals/entities to qualify for the endorsement: higher landings requirements would result in fewer qualifiers. The Council's choice of preferred alternative was based on the assessment that about 30 individuals/entities can be profitably sustained by the black sea bass pot segment of the snapper-grouper fishery. In this case, sub-alternatives requiring less than 2,500 lb (1,134 kg), round weight, of landings for endorsement eligibility would likely result in unsustainable profits. On the other end, sub-alternatives requiring higher than 2,500 lb (1,134 kg), round weight, of landings would severely restrict participation in the fishery although industry profitability would be more sustainable. In addition, a highly restrictive endorsement qualification criterion, such as 10,000 lb (4,536 kg), round weight, would tend to eliminate small scale operations that have historically characterized the black sea bass pot segment of the snapper-grouper fishery. The third alternative, with two sub-alternatives, would require that no South Atlantic state shall have fewer than two entities qualifying for the endorsement. The first sub-alternative would set a minimum landings requirement of 1,000 lb (454 kg), round weight, and the second, 2,000 lb (907 kg), round weight. This alternative, with the sub-alternatives, was intended to allow participation by all South Atlantic states in the endorsement program. Since the minimum number of qualifiers from each state would be the same under this alternative and the preferred alternative, the Council deemed this third alternative unnecessary.

Three alternatives, including the preferred alternative, were considered for establishing an appeals process for fishermen initially excluded from the endorsement program. The first alternative, the no action alternative, would not establish an appeals process. This alternative has the potential to unduly penalize participants if they were incorrectly excluded from the endorsement program. The second alternative is the same as the preferred alternative, except that it would establish a special board, composed of state directors and designees, that would review, evaluate, and make individual recommendations to the RA. This alternative would mainly introduce an additional administrative burden that may not improve the appeals process, considering that the only issues subject to appeal are eligibility and landings.

Five alternatives, including the preferred alternative, were considered for limiting effort in the black sea bass pot segment of the snapper-grouper fishery. The first alternative, the no action alternative, would not limit the number of black sea bass pots deployed or pot tags issued to holders of snapper-grouper commercial permits. Among the alternatives, this is potentially the best alternative for efficient operations in the black sea bass pot segment of the snapper-grouper fishery. But with no limit on the number of pots, a high likelihood arises that many pots (left in the water for a longer time due, for example, to vessel or weather problems) may be lost and ''ghost fish'' for black sea bass or other species. In addition, many pots would employ many vertical lines that would increase the probability of interaction with certain protected species. Such occurrences are likely to hinder the rebuilding of black sea bass or other species and to require the implementation of more restrictive measures that would impinge on the profits of commercial vessels. The second alternative would limit black sea bass pot tags to 100 per vessel per year; the second alternative, to 50 per vessel per year; and, the third alternative, to 25 per vessel per year. These other alternatives differ from the preferred alternative only in the maximum number of pots deployed or pot tags issued per vessel, with the higher numbers providing better opportunities for higher profits per vessel trip. But as noted above, the higher number of pots, the higher would be the probability of ghost fishing and interaction with protected species.

Three alternatives, including the preferred alternative, were considered for reducing bycatch in black sea bass pots. The first alternative, the no action alternative, would not implement additional measures for when pots must be removed from the water. This alternative would not help in reducing bycatch in the black sea bass pot segment of the snapper-grouper fishery. The second alternative would allow fishermen to leave pots in the water for no more than 72 hours. This alternative would have about the same effects as the preferred alternative on pot fishing operations, because most fishing trips for black sea bass using pots last for less than 3 days. However, it would present a higher probability for ghost fishing because pots may be left in the water on short vessel trips or not retrieved during inclement weather.

Three alternatives, including the preferred alternative, were considered for modifying the AMs for black sea bass. The first alternative, the no action alternative, would maintain the current commercial and recreational AMs. The Council deemed this alternative to be relatively deficient in constraining harvest at or below the sector ACLs. The

second alternative is similar to the preferred alternative for the recreational sector, except that it would trigger in-season AMs only if the black sea bass stock is overfished. This alternative could lead to larger post-season adjustment of the recreational ACL and thus larger adverse effects on for-hire profits, particularly if the aggregate ACL is exceeded, in order to keep the rebuilding trajectory on track. Moreover, if overages in the recreational harvest lead to exceeding the aggregate ACL, the aggregate ACL would not automatically increase the following year so that both the commercial and recreational sectors would be adversely affected.

Nine alternatives, including the preferred alternative, were considered for establishing a commercial trip limit. The first alternative, the no action alternative, would not establish a commercial trip limit. In principle, this alternative would likely provide the most short-term profitability among commercial vessels on a per trip basis, because commercial vessel operations would remain unaffected. However, this alternative could possibly lead to lower industry profitability as a result of a shortened fishing season that would occur without effectively controlling the harvest rate. The second alternative would establish a trip limit of 500 lb (227 kg), gutted weight; the third alternative, 750 lb (340 kg), gutted weight; the fourth alternative, 1,250 lb (567 kg), gutted weight; the fifth alternative, 1,000 lb (454 kg), gutted weight, and reduced to 500 lb (227 kg), gutted weight, when 75 percent of the commercial ACL is met; the sixth alternative, 2,000 lb (907 kg), gutted weight; the seventh, 2,500 lb (1,134 kg), gutted weight; and, the eighth alternative, 250 lb (113 kg), gutted weight. NMFS expects that trip limits lower than the preferred alternative of 1,000 lb (454 kg), gutted weight, would lead to larger adverse effects on per trip profitability; the opposite would occur with higher trip limits. Based on the Council's assessment, the preferred alternative would provide the best balance between per trip losses in profits and higher industry profits from a longer fishing season.

Three alternatives, including two preferred alternatives, were considered for modifying the commercial and recreational minimum size limit. The first alternative, the no action alternative, would not change the commercial or recreational size limit. In principle, this alternative would provide the best economic environment for both the commercial and recreational sectors, because their operations would remain relatively unaffected. However, this alternative would not help in constraining the rate of harvest which has been increasing in recent years, leading to early closures of both the commercial and recreational sectors of the black sea bass segment of the snapper-grouper fishery. The second alternative includes three sub-alternatives, one of which is the preferred sub-alternative. The second sub-alternative would increase the commercial size limit from 10 inches (25 cm), TL, to 12 inches (30 cm), TL. This sub-alternative would lead to relatively larger adverse effects on the profits of commercial vessels but would also tend to allow a longer fishing season. However, the Council concluded that this sub-alternative would not provide the best balance between short-term profit reductions and profit increases from a longer season. The third sub-alternative would increase the commercial size limit from 10 inches (25 cm), TL, to 11 inches (28 cm), TL, in the first year and to 12 inches (30 cm), TL, thereafter. This sub-alternative would eventually lead to larger adverse effects on the profits of commercial vessels but would also tend to allow a longer fishing season. However, the Council concluded that this sub-alternative would not provide the best balance between short-term profit reductions and profit increases from a longer season.

Four alternatives, including the preferred alternative, were considered for improving for-hire data reporting. The first alternative (the no action alternative) would retain the existing data reporting systems for the for-hire sector. However, the Council deemed modifications to existing recreational data collection necessary to the extent that they would not be too burdensome on for-hire vessel operations. The second alternative would require vessels operating with a Federal for-hire permit to maintain a logbook for discard characteristics (e.g., size and reason for discarding), if selected. This alternative would provide better information regarding discards, but would increase costs for for-hire vessel operations. The third alternative would require that for-hire landings and catch/effort data are submitted in accordance with the Atlantic States Cooperative Statistics Program (ACCSP) standards, using the South Atlantic Fisheries Information System (SAFIS). Although this alternative has the potential to improve recreational data collection, it would be costly to for-hire vessels. Therefore, the Council decided to wait until the new Marine Recreational Information Program (MRIP) has been in place for some time to determine whether it would be sufficient for reporting for-hire landings data.

Four alternatives, including the preferred alternative, were considered for setting the recreational ACT. The first alternative, the no action alternative, would not set a recreational ACT, and thus, would not meet the mentioned objective. The second alternative would set the recreational ACT equal to 85 percent of the recreational ACL. The third alternative would set the recreational ACT equal to 75 percent of the recreational ACL. NMFS estimates that these two alternatives would result in lower ACTs than the preferred alternative, so that if an ACT triggers management actions, these two alternatives would result in larger adverse effects on the profits of for-hire vessels.

In Amendment 18A, the Council considered several actions for which the no-action alternative was the preferred alternative.

Three alternatives, including the preferred alternative (no action alternative), were considered for setting the commercial ACT. The first alternative would set the commercial ACT equal to 90 percent of the commercial ACL. The second alternative would set the commercial ACT equal to 80 percent of the commercial ACL. Because NMFS closely tracks the commercial landings in-season through a quota monitoring system, the Council deemed the need to provide for a commercial ACT as a monitoring tool unnecessary.

Five alternatives, including the preferred alternative (no action alternative), were considered for implementing a spawning season closure. The first alternative would implement a March 1–April 30 spawning season closure; the second alternative, an April 1–May 31 spawning season closure; the third alternative, a March 1–May 31 spawning season closure; and, the fourth alternative, a May 1–May 31 spawning season closure. These alternatives would result in short-term profit reductions to commercial and for-hire vessels. Black sea bass do not form large spawning aggregations and the peak spawning period occurs at different times of the year across the South Atlantic. Therefore, short-term profit reductions could persist in the future as the benefits from a spawning season closure are not well established.

Four alternatives, including the preferred alternative (no action alternative), were considered for improving commercial data reporting. The first alternative would require all

vessels with Federal snapper-grouper commercial permits to have an electronic logbook tied to the vessel's Global Position System onboard the vessel. The second alternative would provide the option for fishermen to submit their logbook entries electronically via an electronic version of the logbook made available online. The third alternative would require submission of commercial landings and catch and effort data in accordance with the ACCSP standards, using the SAFIS. These alternatives would introduce additional cost to commercial fishing operations. The Council decided to address this issue in the future through a comprehensive amendment for improving data collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS estimates the requirement for the for-hire sector of the snapper-grouper fishery to submit logbook information electronically, if selected to do so, to average 30 minutes per electronic logbook installation and 1 minute per weekly download of the weekly logbook information. NMFS estimates the requirement for South Atlantic Unlimited Snapper-Grouper Permit holders to submit their logbook information if they are appealing their landings data for a black sea bass pot endorsement to average 2 hours per response. NMFS estimates the requirement to check boxes on the Federal Permit Application Form for a new endorsement or renewal of the black sea bass pot endorsement to average 1 minute per response. Finally, NMFS estimates the requirement to check boxes on the Federal Permit Application Form for black sea bass pot tags (Floy tags) for the endorsement program to average 1 minute per response. These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 20, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, paragraph (a)(2)(xv) is added and paragraph (a)(5)(i)(A) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xv) *South Atlantic black sea bass pot endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a valid South Atlantic black sea bass pot endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. NMFS will renew this endorsement automatically when renewing the commercial vessel permit for South Atlantic snapper-grouper unlimited associated with the vessel. The RA will not reissue this endorsement if the endorsement or the commercial vessel permit for South Atlantic snapper-grouper unlimited is revoked or if the RA does not receive a complete application for renewal of the commercial vessel permit for South Atlantic snapper-grouper unlimited within 1 year after the permit's expiration date.

(A) *Initial eligibility.* To be eligible for an initial South Atlantic black sea bass pot endorsement, a person must have been issued and must possess a valid or renewable commercial vessel permit for South Atlantic snapper-grouper that has black sea bass landings using black sea bass pot gear averaging at least 2,500 lb (1,134 kg), round weight, annually during the period January 1, 1999 through December 31, 2010. Excluded from this eligibility, are trip-limited permits (South Atlantic snapper-grouper permits that have a 225-lb (102.1-kg) limit of snapper-grouper) and valid or renewable commercial vessel permits for South Atlantic snapper-grouper unlimited that have no reported landings of black sea bass using black sea bass pots from January 1, 2008, through December 31, 2010. NMFS will attribute all applicable black sea bass landings associated with a current snapper-grouper permit for the applicable landings history, including those reported by a person(s) who held the permit prior to the current permit owner, to the current permit owner. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

(B) *Initial issuance.* On or about [*insert date of publication of final rule in the* **Federal Register**], the RA will mail each eligible permittee a black sea bass pot endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than [*insert date 30 days after date of publication of final rule in the* **Federal Register**], to clarify his/her endorsement status. A permittee denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing black sea bass pot endorsement eligibility and/or landings information.* The only items subject to appeal are initial eligibility for a black sea bass pot endorsement based on ownership of a qualifying snapper-grouper permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than [*insert date 120 days after date of publication of final rule in the* **Federal Register**], and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final NMFS decision.

(*1*) *Eligibility appeals.* NMFS' records of snapper-grouper permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, for example, as a result of ownership changes from individual to corporate or vice versa, must document his/her continuity of ownership.

(*2*) *Landings appeals.* Determinations of appeals regarding landings data for 1999 through 2010 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2010 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2011.

(D) *Fees.* No fee applies to initial issuance of a black sea bass pot endorsement. NMFS charges a fee for each renewal or replacement of such endorsement and calculates the amount of each fee in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The handbook is available from the RA. The appropriate fee must accompany each application for renewal or replacement.

* * * * *

(5) * * *

(i) * * *

(A) An operator of a vessel that has or is required to have a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ).

* * * * *

3. In § 622.5, a sentence is added between the first and second sentences in paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) * * * Completed fishing records required by paragraph (b)(1)(ii) of this section for charter vessels may be required weekly or daily, as directed by the SRD. * * *

(ii) * * * Completed fishing records required by paragraph (b)(1)(ii) of this section for headboats may be required weekly or daily, as directed by the SRD. * * *

* * * * *

4. In § 622.37, paragraph (e)(3)(i) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(e) * * *

(3) * * *

(i) *Black seas bass.* (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii)—13 inches (33 cm), TL.

(B) For a fish taken by a person not subject to the bag limit specified in § 622.39(d)(1)(vii)—11 inches (28 cm), TL.

* * * * *

5. In § 622.40, paragraph (d)(1)(i)(B) is revised and paragraphs (d)(1)(i)(C) and (D) are added to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ and the vessel must be returned to a dock, berth, beach, seawall, or ramp at the conclusion of each trip. Sea bass pots may remain on the vessel at the conclusion of each trip.

(C) A sea bass pot must be removed from the water in the South Atlantic EEZ when the applicable quota specified in § 622.42(e)(5) is reached. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(D) A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag issued by NMFS attached. NMFS will issue new identification tags each permit year that will replace the tags from the previous permit year.

* * * * *

6. In § 622.42, paragraph (e)(5) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(5) *Black sea bass*—309,000 lb (140,160 kg), gutted weight; 364,620 lb (165,389 kg), round weight.

* * * * *

7. In § 622.44, paragraph (c)(8) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(8) *Black sea bass.* Until the applicable quota specified in § 622.42(e)(5) is reached, 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.43(a)(5) for the limitations regarding black sea bass after the applicable quota is reached.

* * * * *

8. In § 622.49, paragraph (b)(5) is revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability Measures (AMs).

* * * * *

(b) * * *

(5) *Black sea bass*—(i) *Commercial sector.* (A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(5), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) If commercial landings exceed the quota specified in § 622.42(e)(5), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(ii) *Recreational sector.* (A) If recreational landings for black sea bass, as estimated by the SRD, are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight; the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

* * * * *

[FR Doc. 2012–7045 Filed 3–22–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 57
Friday, March 23, 2012

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.

Agency for International Development

Notice of Meeting: Board for International Food and Agricultural Development

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 2:30 p.m. on April 13, 2012 at the National Press Club located at 529 14th St. NW., Washington, DC. The central theme of this year's meeting will center on the breadth of university partnerships in agricultural research and development with USAID and the future of those relationships.

Dr. Brady Deaton, BIFAD Chair and Chancellor of the University of Missouri at Columbia, will preside over the meeting.

The public meeting will begin promptly at 8:30 a.m. with opening remarks by BIFAD Chair Brady Deaton. The Board will address both old and new business during this time and hear from USAID on the implementation of the agricultural research strategy. Two board members will discuss outcomes of recent research inception workshops on sustainable intensification, hosted by USAID in Ethiopia and Tanzania. Two other board members will then offer comments on their travel to and participation in events and planning meetings related to the USAID Collaborative Research Support Program (CRSP). Time will then be allowed for public comment. The board will then break for closed lunch.

In the afternoon, the board will hear from Dr. Alex Dehgan, USAID Chief Scientist, on the Grand Challenges for Development initiative and the Higher Education Solutions Network Request for Assistance, in which academic institutions were invited to participate. Another opportunity will be allowed for public comment. The Board members greatly benefit in hearing from the stakeholder community and others. To ensure that as many participants as possible have the opportunity to contribute to the morning's discussion, comments will be restricted to 3 minutes each for each commenter.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.12–001, Washington, DC 20523–2110 or telephone her at (202) 712–0218.

Susan Owens,

USAID Designated Federal Officer, BIFAD.

[FR Doc. 2012–7014 Filed 3–22–12; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF AGRICULTURE

USDA Public Stakeholder Meeting: Match Making in the Biofuels Value Chain

AGENCY: Office of the Chief Economist, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture (USDA) is hosting a match making day at the USDA, to promote the necessary connections between agricultural producers of energy feedstocks (and their related businesses) with biorefiners seeking to produce biofuels for commercial sale and consumption. Officials from the U.S. Department of Navy, U.S. Department of Energy, and the U.S. Department of Transportation will also be attending, making presentations and answering questions. The objectives of this match making session will be to improve awareness and increase understanding of the biofuels supply chain links between all those involved in feedstock production and the processors of that feedstock into biofuels. This includes logistical challenges, potential roles of ancillary service providers, and potential pitfalls and blindspots. At this meeting, federal officials will provide a short profile of each section of the supply chain and representatives from the participating stakeholders will respond with short formal presentations that outline their experiences in that respective supply chain sector, barriers and lessons learned, and potential growth and opportunities. Short presentations will be made at the top of each hour followed by table discussions, at which a representative from each of the sectors of the biofuels supply chain should be seated, as well as one or more government officials.

DATES: The meeting will be held on March 30, 2012, from 10 a.m. to 5 p.m. Attendees are requested to arrive by 9:30 a.m. in order to pass through USDA's security clearance.

ADDRESSES: Patio, United States Department of Agriculture Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Harry S. Baumes, Director, Office of Energy Policy and New Uses, Office of the Chief Economist; telephone (202) 401–0461; or email: *hbaumes@oce.usda.gov*.

SUPPLEMENTARY INFORMATION: In order to assure sufficient space and seating, prospective attendees are asked to register by sending an email to *OSEC–RESupplyChain@osec.usda.gov:* identify as the Subject ''MARCH 30 REGISTRATION''; and include the following information:

Name of the Company:

Name and Title of Attendees:

Address:

Phone number:

Email:

Web site:

Please Describe Your Position on the Biofuels Production Value Chain: (feedstock seed developer or provider, feedstock grower or harvester, feedstock processor, feedstock transporter, feedstock storage provider, bio-refiner, feedstock machinery manufacturer/provider, other).

Signed in Washington, DC on March 19, 2012.

Joseph W. Glauber,

Chief Economist, Office of the Chief Economist, Department of Agriculture.

[FR Doc. 2012–7021 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–38–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comments Request—WIC Infant and Toddler Feeding Practices Study-2 (WIC ITFPS–2)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public and other public agencies to comment on this proposed information collection. This is a new collection for the Food and Nutrition Service to update and build upon previous research conducted in the 1990's, the WIC Infant Feeding Practices (WIC IFPS–1). The currently planned study will provide contemporary information on the feeding practices of this specific population of children enrolled in WIC over the first two years of their lives. It will determine the prevalence of particular feeding practices in the WIC population, and assess whether the new WIC food packages, instituted in 2009, have influenced those feeding practices, specifically as it relates to breastfeeding rates. This study will also examine the circumstances and influences that shape a mother's feeding decisions for their child and describe the impact of these decisions throughout early child development.

DATES: Written comments must be received on or before May 22, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Office of Research and Analysis, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2017 or via email to Steve.Carlson@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the Office of Research and Analysis, Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION: *Title:* Women Infants and Children Infant and Toddler Feeding Practices Study-2 (WIC ITFPS–2).

OMB Number: 0584–NEW.

Expiration Date of Approval: Not yet determined.

Type of request: New collection.

Abstract: The Food and Nutrition Service's (FNS) WIC ITFPS–2 will update the current body of knowledge regarding infant and toddler feeding practices and behaviors. This important research is needed to understand the nutritional intake and feeding patterns within the WIC population to assist in the development of appropriate and effective prevention strategies to improve the health of young children. With over 50 percent of the nation's infants enrolled in WIC, it is hoped that prevention strategies implemented in WIC will have a substantial impact on the growth and health of U.S. infants and children.

The objectives of the WIC ITFPS–2 include:

- Update data collected in WIC–IFPS–1.
- Compare new findings with other major studies (WIC–IFPS–1, FDA IFPS, and the Gerber/Nestle 2002 and 2008 FITS studies).
- Assess effectiveness of different education and breastfeeding promotion approaches in achieving recommended feeding patterns and behaviors.
- Assess conditions of overfeeding and overconsumption.
- Identify nutrition education influences.
- Assess impact of WIC food packages on outcomes.
- Determine changes in maternal feeding practices and behaviors over time as infants and toddlers transition into or out of WIC.

The data collection activities to be undertaken subject to this notice include:

- An in-person eligibility screener and recruitment interview will be administered to WIC others/caretakers at the point of enrollment, either when they enroll in WIC prenatally or after the child is born. Sampled participants will be assigned to either the core sample or the supplemental sample. Up to 11 distinct telephone interviews will be administered to the core sample when the child is 1, 3, 5, 7, 9, 11, 13, 15, 18, and 24 months old; and 4 telephone interviews will be administered to the supplemental sample. The telephone interviews will include a 24-hour dietary recall.
- An in-depth telephone interview will be conducted with key staff in the state and local WIC administration offices of the sampled WIC service sites.
- A web survey will be conducted with multiple WIC clinic staff at all recruited WIC service sites.

Affected Public

- Individual/Household (7,841 WIC Breastfeeding Mothers): Respondent groups identified include women enrolling in the WIC program or the primary caregiver of the WIC enrolled infant. A total of 728 of those eligible (14%) will not participate in part or in whole.
- State, Local and Tribal Agencies (105 key Informants and 800 WIC Staff): WIC program administrators at the local and state level (key informants) and staff persons who are providing WIC services through direct client interaction. All key informants will participate. FNS estimates 80% or 600 WIC program administrators will participate; 200 will not participate.

Estimated Number of Respondents: As presented in Table 1, the total number of respondents is 8,746. A total of 7,841 are WIC participants, 105 are state and local key informants, and 800 are local WIC staff. Of the 5,163 WIC women who complete the eligibility screener, we will recruit 4,435 [1] women into the study (86%). Of those, 2,141 women in the core sample and 928 in the supplemental sample will complete the study. All WIC participants will

[1] 4,435 = 3,416 prenatal women + 1,019 post-natal women; however, of the 4,435 prenatal women, we expect only 2,972 will have live births. Therefore, 2,972 live births + 1,019 post-natal = 3,991. This equals the number of Completed + Attempted interviews for the Core and Supplemental follow-up interviews in Table 1.

receive the screener and recruitment interviews. Most WIC participants in the core sample will be interviewed when their child is 1, 3, 5, 7, 9, 11, 13, 15, 18, and 24 months old; participants who are recruited prenatally will also receive a prenatal interview. About 18 percent of participants in the core sample will not be enrolled in the study until their child is 2 months old and therefore will be interviewed beginning at 3 months. WIC participants in the supplemental sample will be interviewed when their child is either 1 or 3 months old (depending on the age of the child when recruited) and at 7, 13, and 24 months. All 105 key informants will complete the in-depth interview, and 600 WIC staff (80%) will complete a web survey.

Estimated Total Annual Responses: The total annualized estimated number of responses is 17,225: 16,922 responses by WIC participants, 35 responses by WIC key informants, and 267 by WIC staff. The 16,992 WIC participant responses include a 10 percent subsample of core respondents who will complete a second 24-hour dietary recall for all postnatal interviews. Annualized burden should be multiplied by 3 to get the burden over the life of the 3-year data collection period (note: the maximum burden hours fall in the first year of infant life).

Estimated Time per Response: WIC mothers/caregivers will take approximately 5 minutes (.08333 hours) to complete the eligibility screener; 20 minutes (.3333 hours) to complete the recruitment interview; and an average of 30 minutes (.5000 hours) to complete all follow up telephone interviews (prenatal, 1, 3, 5, 7, 9, 11, 13, 15, 18, 24-month). The key informant interviews will take an average of 60 minutes and the WIC clinic staff web survey will take approximately 30 minutes (.5000 hours) to complete.

Estimated Total Annual Burden on Respondents: FNS estimates the annualized burden is 5,804 hours.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Respondents by type of interview	Estimated annualized burden hours				
	Number of respondents	Number of responses per respondent	Estimated total annual responses	Average burden hours per response	Total annual hour burden
WIC Participant Interviews					
Eligibility Screener.					
Completed	5,163	0.334	1,724.11	0.0835	143.99
Attempted	2,678	0.334	894.452	0.0334	29.87
Recruitment Interview					
Completed	4,435	0.334	1,481.29	0.334	494.75
Attempted	728	0.334	243.15	0.0334	8.12
Core Follow-up interviews					
Completed	2141	4	8,564.00	0.5	4,281.01
Attempted	663	3.67	2,433.21	0.0334	81.27
Supplemental Follow-up interviews					
Completed	928	1.334	1,237.95	0.5	618.98
Attempted	258	1.334	344.17	0.0334	11.50
WIC participant Total	*7,841*		*16,922.67*		*5,669.49*
WIC Key Informants					
Key Informant interview					
Completed	105	0.33	34.65	1.0	34.65
Attempted	0	0.33	0	0.0334	0
Key informant Total	*105*		*34.65*		*34.65*
WIC Staff					
Web survey					
Completed	600	0.334	200.4	0.5	100.2
Attempted	200	0.334	66.8	0	0
Staff Survey Total	*800*		*267.2*		*100.2*
Annualized Total	8,746		17,225		5,804.34

[1] 4,435 = 3,416 prenatal women + 1,019 post-natal women; however, of the 4,435 prenatal women, we expect only 2,972 will have live births. Therefore, 2,972 live births + 1,019 post-natal = 3,991. This equals the number of Completed + Attempted interviews for the Core and Supplemental follow-up interviews in Table 1.

[2] Total Annual hour burden will need to be multiple by 3 for the 3 year data collection period (note: the maximum burden hours fall in the first year of infant life).

Dated: March 19, 2012.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–7033 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program, Administrative Review Requirements—Food Retailers and Wholesalers

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a currently approved collection.

DATES: Written comments must be received on or before May 22, 2012 to be assured of consideration.

ADDRESSES: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Karen Walker, Chief, Administrative Review Branch, Benefit Redemption Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 438, Alexandria, Virginia 22302. Comments may also be submitted via fax to the attention of Karen Walker at (703) 305–2822, or via email to *brdhq-web@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 438.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Karen Walker, (703) 305–2822.

SUPPLEMENTARY INFORMATION:

Title: Request for Administrative Review.

OMB Number: 0584–0520.

Expiration Date: August 31, 2012.

Type of Request: Revision of a currently approved collection of information.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Supplemental Nutrition Assistance Program (SNAP). The Food and Nutrition Act of 2008, (7 U.S.C. 2011–2036) requires that the FNS determine the eligibility of retail food stores and certain food service organizations in order to participate in SNAP. If a food retailer or wholesale food concern is aggrieved by certain administrative action by FNS, that store has the right to file a written request for review of the administrative action with FNS.

Respondents: Business-for-profit: Retail food stores and wholesale food concerns.

Estimated Number of Respondents: 897.

Number of Responses per Respondent: 1.2.

Estimated Total Annual Response per Respondent: 1,076.4

Estimated Time per Response: Public reporting burden for this collection of information is estimated to average 0.17 of an hour per response.

Estimated Total Annual Burden on Respondents: 183.00 hours.

Dated: March 19, 2012.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–7034 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2012 through June 30, 2013. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: *Effective Date:* July 1, 2012.

FOR FURTHER INFORMATION CONTACT: William Wagoner, Supervisory Program Analyst, School Programs Section, Child Nutrition Division, Food and Nutrition Service (FNS), USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National

School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Manual for School Meals,* ''income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2012 through June 30, 2013. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2012 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. This Notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 3.1% over last year's level for a family of the same size.

INCOME ELIGIBILITY GUIDELINES												
			Effective from				July 1, 2012	to	June 30, 2013			
HOUSEHOLD SIZE	FEDERAL POVERTY GUIDELINES ANNUAL		REDUCED PRICE MEALS - 185 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY		FREE MEALS - 130 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES												
1	11,170		20,665	1,723	862	795	398		14,521	1,211	606	559	280
2	15,130		27,991	2,333	1,167	1,077	539		19,669	1,640	820	757	379
3	19,090		35,317	2,944	1,472	1,359	680		24,817	2,069	1,035	955	478
4	23,050		42,643	3,554	1,777	1,641	821		29,965	2,498	1,249	1,153	577
5	27,010		49,969	4,165	2,083	1,922	961		35,113	2,927	1,464	1,351	676
6	30,970		57,295	4,775	2,388	2,204	1,102		40,261	3,356	1,678	1,549	775
7	34,930		64,621	5,386	2,693	2,486	1,243		45,409	3,785	1,893	1,747	874
8	38,890		71,947	5,996	2,998	2,768	1,384		50,557	4,214	2,107	1,945	973
For each add'l family member, add	3,960		7,326	611	306	282	141		5,148	429	215	198	99
ALASKA												
1	13,970		25,845	2,154	1,077	995	498		18,161	1,514	757	699	350
2	18,920		35,002	2,917	1,459	1,347	674		24,596	2,050	1,025	946	473
3	23,870		44,160	3,680	1,840	1,699	850		31,031	2,586	1,293	1,194	597
4	28,820		53,317	4,444	2,222	2,051	1,026		37,466	3,123	1,562	1,441	721
5	33,770		62,475	5,207	2,604	2,403	1,202		43,901	3,659	1,830	1,689	845
6	38,720		71,632	5,970	2,985	2,756	1,378		50,336	4,195	2,098	1,936	968
7	43,670		80,790	6,733	3,367	3,108	1,554		56,771	4,731	2,366	2,184	1,092
8	48,620		89,947	7,496	3,748	3,460	1,730		63,206	5,268	2,634	2,431	1,216
For each add'l family member, add	4,950		9,158	764	382	353	177		6,435	537	269	248	124
HAWAII												
1	12,860		23,791	1,983	992	916	458		16,718	1,394	697	643	322
2	17,410		32,209	2,685	1,343	1,239	620		22,633	1,887	944	871	436
3	21,960		40,626	3,386	1,693	1,563	782		28,548	2,379	1,190	1,098	549
4	26,510		49,044	4,087	2,044	1,887	944		34,463	2,872	1,436	1,326	663
5	31,060		57,461	4,789	2,395	2,211	1,106		40,378	3,365	1,683	1,553	777
6	35,610		65,879	5,490	2,745	2,534	1,267		46,293	3,858	1,929	1,781	891
7	40,160		74,296	6,192	3,096	2,858	1,429		52,208	4,351	2,176	2,008	1,004
8	44,710		82,714	6,893	3,447	3,182	1,591		58,123	4,844	2,422	2,236	1,118
For each add'l family member, add	4,550		8,418	702	351	324	162		5,915	493	247	228	114

Authority: 42 U.S.C. 1758(b)(1).

Dated: March 19, 2012.

Jeffrey J. Tribiano,

Acting Administrator.

[FR Doc. 2012–7036 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: *Effective Date:* July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Hines, Branch Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted. Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2012/2013 was published by the Department of Health and Human

Services (HHS) at 77 FR 4034, January 26, 2012. The guidelines published by HHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar. At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2012, through June 30, 2013. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, i.e., earlier in the year, but in no case may implementation take place later than July 1, 2012.

State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2012. The first table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all Territories, including Guam.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2012 to June 30, 2013]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$11,170	$931	$466	$430	$215	$20,665	$1,723	$862	$795	$398
2	15,130	1,261	631	582	291	27,991	2,333	1,167	1,077	539
3	19,090	1,591	796	735	368	35,317	2,944	1,472	1,359	680
4	23,050	1,921	961	887	444	42,643	3,554	1,777	1,641	821
5	27,010	2,251	1,126	1,039	520	49,969	4,165	2,083	1,922	961
6	30,970	2,581	1,291	1,192	596	57,295	4,775	2,388	2,204	1,102
7	34,930	2,911	1,456	1,344	672	64,621	5,386	2,693	2,486	1,243
8	38,890	3,241	1,621	1,496	748	71,947	5,996	2,998	2,768	1,384
Each add'l family member add	+3,960	+330	+165	+153	+77	+7,326	+611	+306	+282	+141
Alaska										
1	13,970	1,165	583	538	269	25,845	2,154	1,077	995	498
2	18,920	1,577	789	728	364	35,002	2,917	1,459	1,347	674
3	23,870	1,990	995	919	460	44,160	3,680	1,840	1,699	850
4	28,820	2,402	1,201	1,109	555	53,317	4,444	2,222	2,051	1,026
5	33,770	2,815	1,408	1,299	650	62,475	5,207	2,604	2,403	1,202
6	38,720	3,227	1,614	1,490	745	71,632	5,970	2,985	2,756	1,378
7	43,670	3,640	1,820	1,680	840	80,790	6,733	3,367	3,108	1,554
8	48,620	4,052	2,026	1,870	935	89,947	7,496	3,748	3,460	1,730
Each add'l family member add	+4,950	+413	+207	+191	+96	+9,158	+764	+382	+353	+177
Hawaii										
1	12,860	1,072	536	495	248	23,791	1,983	992	916	458
2	17,410	1,451	726	670	335	32,209	2,685	1,343	1,239	620
3	21,960	1,830	915	845	423	40,626	3,386	1,693	1,563	782
4	26,510	2,210	1,105	1,020	510	49,044	4,087	2,044	1,887	944
5	31,060	2,589	1,295	1,195	598	57,461	4,789	2,395	2,211	1,106
6	35,610	2,968	1,484	1,370	685	65,879	5,490	2,745	2,534	1,267
7	40,160	3,347	1,674	1,545	773	74,296	6,192	3,096	2,858	1,429
8	44,710	3,726	1,863	1,720	860	82,714	6,893	3,447	3,182	1,591
Each add'l family member add	+4,550	+380	+190	+175	+88	+8,418	+702	+351	+324	+162

Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Authority: 42 U.S.C. 1786.

Dated: March 19, 2012.

Jeffrey J. Tribiano,

Acting Administrator.

[FR Doc. 2012–7037 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Cabinet Ranger District, Montana Pilgrim Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This vegetation management project is designed to achieve goals of enhanced forest stand resilience and resistance to insect and disease agents by altering stand density, species composition, and age class structure, via use of timber harvesting and prescribed fire use. Big game forage would be enhanced through use of prescribed fire to rejuvenate and increase palatability of shrubs and grasses, including some sites within Inventoried Roadless Areas (IRA). No mechanical activities are proposed within IRA boundaries.

This Project was originally initiated in 2010 with scoping of the proposed action. In addition, in 2011 public scoping was again initiated in reference to openings sizes exceeding 40 acres and the requirement for a project-specific Forest Plan amendment related to open road density in areas managed for big game summer range. Subsequent analyses of potential environmental effects were documented in an Environmental Assessment (EA). Based on the level of interest, and recognizing the scope and potential issues associated with the project, as the Forest Supervisor for the Kootenai National Forest I have made the decision to halt the EA process and commence with the process to document findings in an Environmental Impact Statement. The comments received during the scoping process for the Environmental Assessment will be used in preparation of the EIS; therefore scoping will not be reinitiated.

DATES: Comments concerning the scope of the analysis must be received by April 23, 2012. The draft environmental impact statement is expected May 2012 and the final environmental impact statement is expected September 2012.

ADDRESSES: Send written comments to Kootenai National Forest, Pilgrim Timber Sale Project, Cabinet Ranger District, 2693 Highway 200, Trout Creek, MT 59874. Comments may also be sent via email to: *comments-northern-kootenai-cabinet-fs.fed.us,* or via facsimile to 406/827–0718. Electronic comments must be submitted in Microsoft Word format. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions specific to the Proposal.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Doug Grupenhoff, Team Leader, (406) 827–3533 or to the Kootenai National Forest Web page: *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=31645.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

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

Purpose and Need for Action

There is a need to reduce stand densities, improve growing conditions, and increase the proportion of root disease-resistant tree species in the area; there is a need to increase age class diversity in lodgepole pine-dominated forest communities in the project area; there is a need to provide local employment related to forest management and restoration activities and to supply forest products to contribute to the support of that segment of the local and regional economy dependent on timber products; and, there is a need to improve forage production and quality through the use of such treatments as commercial timber harvest, slashing, and prescribed fire.

Proposed Action

The proposed action includes timber harvest, prescribed burning, and road work necessary to provide safe access to the proposed treatment areas while minimizing resource impacts, as summarized below:

Approximately 500 acres of regeneration harvest are proposed, most of which would be removed with cable logging systems. Approximately 55–75 acres would be tractor yarded. These treatment areas are generally located where lodgepole pine is susceptible to mountain pine beetle attack or is currently infested, or in areas where Douglas-fir or true firs are infected with root disease at unacceptably high levels. In the latter case, we propose to increase the proportion of root disease resistant species (such as western larch, western white pine, or ponderosa pine) on the site to maintain viable forest communities over time. This can be done by favoring these species in the residual stand or by replanting these species after harvest if they are not well represented in the original stand. For most areas where regeneration harvest is proposed in lodgepole pine stands, we will generally propose to allow natural revegetation of the site back to lodgepole pine.

Approximately 900 acres of intermediate harvest is proposed; approximately one third will be tractor yarded and two thirds will require the use of a cable system. These commercial thinning treatments would leave a fully stocked stand after harvest with the objective of improving growing conditions for the residual trees.

To access proposed harvest areas, approximately 3.1 miles of new, permanent road would need to be constructed and approximately 1.8 miles of temporary road would be constructed and removed following completion of treatment activities. In addition, approximately 26 miles of road reconditioning to bring roads up to current standards of surface water management and provide for safe hauling. Approximately 6,950 acres have been identified as a perimeter for prescribed burning to enhance forage quality and quantity for big game species, notably elk, deer, and bears. Generally, these areas are on southerly aspects that have historically provided important forage which is declining due to conifer encroachment and forage senescence. Prescribed burns would occur during the cooler, moister spring period when the risk of large, high intensity fires is lower. On a yearly basis, depending on conditions, it is estimated that ignition would be unlikely to exceed 1,000 acres per year.

Portions of three Inventoried Roadless Areas (IRAs) are located within the Project Area and occupy a total of approximately 13,843 acres, or about 46% of the area. There are no harvest activities proposed within these roadless areas. Prescribed burning is being proposed within portions of these IRAs. Burning will be conducted in a manner so as to maintain their natural character and improve wildlife habitat.

Because of the extent of a current mountain pine beetle infestation, larger units are proposed to increase the amount of lodgepole treated and more closely approximate typical patch sizes of lodgepole pine in this area while still protecting important resources including stream integrity and fish habitat. Some of these units would create openings that would exceed 40 acres in size, for which approval by the Regional Forester is generally required.

All action alternatives propose treatment in MA–12 to meet the purpose and need for this project, and this activity requires the use of roads within MA–12 which are currently closed.

Additionally, some alternatives propose new road construction within MA–12. This would result in exceeding the open road density standard during the life of the project and require a site-specific Forest Plan amendment. All roads opened for project activities and all newly constructed roads would be effectively closed after completion of project activities, so there would be no long term increase in open road densities.

Specifically, the proposed action (Alternative 2) would increase ORDs in MA–12 to 2.3 miles per square mile during harvest activities if all roads were open concurrently. Alternative 3 would result in an ORD of 2.6 miles per square mile during operations, and Alternative 4 would not change the existing condition. Following completion of project activities, open road densities would return to pre-project levels.

Possible Alternatives

Four alternatives have been identified; the No Action, the Proposed Action described in this Notice of Intent, an action alternative that more specifically addresses concerns and issues related to an on-going, aggressive expansion of mountain pine beetle activity into stands dominated by lodgepole pine, and an action alternative that would address concerns regarding new road construction which would accomplish stand treatments using the existing transportation system.

Responsible Official

As the Kootenai National Forest Supervisor, I am the responsible official for this decision.

Nature of Decision To Be Made

My decision will be whether or not to implement the proposed action as described, including timber harvest, road work, prescribed burning to enhance big game forage, approval of a project-specific amendment to the Forest Plan for open road density in MA–12, changes in some Management Area designation for difficult regeneration sites, and to exceed the 40 acre opening size limit under the National Forest Management Act (1976), or to implement an alternative course of action, as expressed in alternatives to the proposed action.

Scoping Process

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: March 8, 2012.

Paul Stantus,

Acting Forest Supervisor.

[FR Doc. 2012–7052 Filed 3–22–12; 8:45 am]

BILLING CODE 3410–11–P

OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

Review of Federal Permit Conditions

AGENCY: Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

ACTION: Notice and request for public comment.

SUMMARY: The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects is proposing to implement its statutory responsibilities under the Alaska Natural Gas Pipeline Act (15 U.S.C. 720) with respect to federal permit conditions imposed on the gas pipeline project. This policy statement will establish the agency's procedures for determining whether certain conditions included in a certificate, right-of-way, permit, lease, or other authorization for an Alaska natural gas transportation project by other federal agencies are prohibited under the Alaska Natural Gas Pipeline Act.

DATES: Submit comments on or before April 23, 2012.

ADDRESSES: Address all comments concerning this notice to Frank Richards, Deputy Federal Coordinator, Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects; 188 W. Northern Lights Blvd., Suite 600; Anchorage, AK 99503. Submit electronic comments to: *frichards@arcticgas.gov*.

FOR FURTHER INFORMATION CONTACT: Frank Richards, Deputy Federal Coordinator, Alaska Natural Gas Transportation Projects, 907–271–5240.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Alaska Natural Gas Pipeline Act in 2004 (15 U.S.C. 720) to encourage completion of a pipeline to deliver natural gas from Alaska's North Slope to the Lower 48 states. The Alaska Natural Gas Pipeline Act establishes a new process for approval and construction of the pipeline, either a project that completes the Alaska Natural Gas Transportation System that President Carter approved in 1977 pursuant to the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719), or a different pipeline project under the Natural Gas Act. The Alaska Natural Gas Pipeline Act of 2004 created the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects and charged the Federal Coordinator, the agency head, with four primary responsibilities: (1) Coordinate the expeditious discharge of all activities by all federal agencies with respect to an Alaska natural gas pipeline; (2) Ensure that all federal agencies comply with the Alaska Natural Gas Pipeline Act; (3) Prohibit federal agencies from imposing permit conditions that would prevent or impair in any significant respect the expeditious construction and operation of the project unless the conditions are required by law. The act directs the Federal Coordinator to determine whether a term or condition would prevent or impair in any significant respect the expeditious construction and operation of the project; and (4) Participate with the state of Alaska in a joint construction surveillance and monitoring agreement.

In addition, Congress transferred to the Federal Coordinator all of the responsibilities and authorities of the Federal Inspector under the Alaska Natural Gas Transportation Act of 1976. These responsibilities will be applicable if the Alaska Natural Gas Transportation System gas line is completed or if the 1980's prebuilt sections of that project are expanded or modified within the United States to handle Alaska gas.

This policy addresses the third of the four statutory requirements listed above by explaining how the Federal Coordinator will determine whether conditions that federal agencies intend to impose on permits, rights-of-way or other authorizations for an Alaska gas transportation project will prevent or impair in any significant respect the expeditious construction and operation of the project.

Several sections of the Alaska Natural Gas Pipeline Act require the Federal Coordinator to consider permit conditions imposed by federal agencies with respect to the pipeline. Section 106(d)(2), Public Law 108–324, 118 Stat. 1255 prohibits agencies from including

certain conditions in permits and other approvals, it states:

(2) PROHIBITION OF CERTAIN TERMS AND CONDITIONS—No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

Thus, the Alaska Natural Gas Pipeline Act of 2004 prohibits conditions that may be included but are not required by any applicable law if the Federal Coordinator determines that the condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project. The Federal Coordinator's function with regard to some conditions is limited. Under the Alaska Natural Gas Pipeline Act, Division C, Section 106(d)(4), Public Law 108–324 denies the Federal Coordinator any authority to override the Federal Energy Regulatory Commission's implementation of open seasons for the project or the Commission's orders for expansion of the project under Section 105 of the Alaska Natural Gas Pipeline Act, or to add or impose any terms or conditions to the Federal Energy Regulatory Commission certificate or any agency's permit or other authorization for the project. Division C, Section 106(d)(4), Public Law 108–324 states:

(4) LIMITATION—The Federal Coordinator shall not have authority to—

(A) Override—

(i) The implementation or enforcement of regulations issued by the Commission under section 103; or

(ii) An order by the Commission to expand the project under section 105; or

(B) Impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

The Alaska Natural Gas Pipeline Act also prohibits federal agencies from amending any previously issued permit or authorization to add conditions determined by the Federal Coordinator to prevent or impair in any significant respect the expeditious construction and operation of the pipeline.

(3) PROHIBITION OF CERTAIN ACTIONS—Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, Or an expansion, of the Alaska natural gas transportation project. ANGPA § 106(d)(3).

The prohibition of permit conditions which would prevent or impair in any significant respect expeditious construction and operation does not apply to conditions adopted by state agencies, even those issued pursuant to programs encouraged or funded by the federal government. However, if a state-issued permit includes a condition which is incorporated into a federal permit by a federal agency, the Federal Coordinator may review the condition that the federal agency adopted. Any determination the Federal Coordinator makes would not affect the state condition, just the applicability of the federal permit condition.

II. Discussion of Proposed Policy

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects proposes to implement provisions of the Alaska Natural Gas Transportation Act of 2004 by policy, which will establish the process by which the Federal Coordinator will exercise its responsibility to determine whether permit conditions would interfere with completion of the project. This policy will apply to the agency's review of conditions initially included in a permit or authorization for an Alaska natural gas transportation project, as well as any renewal or reissuance of permits or other authorizations.

A. Intention To Work With Other Agencies

It is the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects' intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process and during the permit application review process of each agency in order to identify the likely need for permit conditions early and to determine as soon as possible whether a particular permit condition would be inconsistent with the Alaska Natural Gas Pipeline Act's statutory prohibition. The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early on and either avoid a formal review process or conclude it expeditiously.

B. Definitions

(1) *Condition:* The agency proposes to define term or condition of the Alaska Natural Gas Pipeline Act, Section 106(d)(2), Public Law 108–324, 118 Stat. 1255—referred to in this policy as condition—to mean any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. That includes all terms, stipulations or conditions required by the agency and any other requirement imposed by a federal agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

(2) *Certificate, Right-Of-Way, Permit, Lease, or Other Authorization:* The agency proposes to define certificate, right-of-way, permit, lease or other authorization to mean any certificate, right-of-way, permit, lease, approval or other authorization required in order to construct or operate an Alaska natural gas transportation project, but excludes permissions for useful, but not required authorizations. Accordingly, federal loan guarantees, licenses for communications equipment not necessary for the project and other such permissions would not be subject to OFC review.

(3) *Alaska Natural Gas Transportation Project:* The agency does not intend to propose a definition of Alaska natural gas transportation project, as that term is defined in the Alaska Natural Gas Pipeline Act in Section 102 of Public Law 108–324, 118 Stat. 1255. It is important to note that the definition includes the entire system, not simply the pipeline. Therefore, this permit review policy will cover conditions addressing support facilities, compressor stations, the gas treatment plant, and other parts of the project.

(4) *Prevent or Impair in Any Significant Respect the Expeditious Construction and Operation of the Project:* The agency does not intend to define prevent or impair in any significant respect the expeditious construction and operation of the project because the agency believes this should be interpreted based on the circumstances of the project at the time of an agency's action, the agency's intention and justification in crafting the proposed condition, and the condition's effect on the project. Prevent or impair in any significant respect cannot be well-defined in the absence of specific circumstances. As an example, a condition that causes a significant delay in the first in-service date contractually agreed to between the

pipeline owner and/or operator and a shipper could, if extreme, be deemed to impair expeditious construction and operation of the project. However, such a determination could only be made if the contractual in-service date were reasonable in light of the complexity of the project and other circumstances.

C. Process for Review of Permit Conditions

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects does not intend to review every condition on every permit. Rather, the agency will review permit conditions at the request of the applicant or permittee. In addition, agency reserves the right to select conditions for review on its own initiative. When the permitting agency's practice or regulations allow that agency or the Office of the Federal Coordinator to share a draft permit condition with an applicant, the Office of the Federal Coordinator will work with the applicant and the agency as early as possible to identify problematic permit conditions. An applicant may request review of a permit condition by the Office of the Federal Coordinator prior to issuance if the applicant believes it may prevent or impair in any significant respect the expeditious construction and operation of the project.

If the practice of the permitting agency does not allow draft permit conditions to be shared with an applicant, the permittee will have to wait to request review of a permit condition until after the permit is issued.

Requests from the applicant or the permittee for review of permit conditions should specify what specific condition will prevent or impair expeditious construction and operation of the project and should explain why the condition will have a detrimental impact on the project.

D. Information Required for Review

The Office of the Federal Coordinator will need background information from the agency in order to conduct its review, including:

(1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not been issued, a statement addressing whether it is permissible under the agency's practice to share the draft condition with the applicant.

The Office of the Federal Coordinator expects this information should be readily available from the agency and will not impose a burden on the agency, as it should have already documented the need for the condition as part of the administrative record. Accordingly, the Office of the Federal Coordinator anticipates that the agency will be able to provide this information within ten (10) calendar days of Office of the Federal Coordinator's notification of a review and request for additional information.

Based on Office of the Federal Coordinator's review of the proposed condition, the Federal Coordinator will determine whether the condition would prevent or impair in any significant respect the expeditious construction and operation of the project. In most cases, the Office of the Federal Coordinator's review should be completed in less than thirty (30) days after a project applicant requests a review. The Federal Coordinator will provide notice of its decision and reasoning to the applicant and the agency. If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the Office of the Federal Coordinator will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

III. Proposed Policy for Review of Federal Permit Conditions for an Alaska Natural Gas Pipeline Project

The purpose of this policy is to explain how the Office of the Federal Coordinator (OFC) will exercise its responsibilities with respect to review of permit conditions under Section 106(d) of the Alaska Natural Gas Pipeline Act (ANGPA). This policy applies to the issuance of initial permits, as well as the renewal or reissuance of permits for an Alaska natural gas transportation project.

It is the OFC's intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process and during the permit application review process of each agency in order to identify the likely need for permit conditions early and to determine as soon as possible whether a particular permit condition would be precluded by ANGPA's statutory prohibition. The OFC expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early on and either avoid a formal review process or conclude it expeditiously.

1. Definitions

(a) Term or condition in Section 106(d)(2) of ANGPA—referred to in this policy as condition—means any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. This includes all terms, stipulations, conditions or additions to the application and any other requirement imposed by an agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

(b) Certificate, right-of-way, permit, lease or other authorization means any certificate, right-of-way, permit, lease, approval or other authorization required in order to construct or operate an Alaska natural gas transportation project.

2. Review of Proposed Terms or Conditions

(a) Review of permit conditions by request of applicant.

(1) An applicant for a permit or a permittee for any permit, certificate, right-of-way or other authorization for an Alaska natural gas transportation project may request the Federal Coordinator to review any condition included in or proposed for inclusion in a permit, certificate, right-of-way or other authorization.

(2) Such requests must be made to the Federal Coordinator no later than 30 days after permit issuance.

(3) The request shall include a specific identification of each condition which the applicant or permittee believes is inconsistent with ANGPA and an explanation of the basis of that belief, including information that supports the contention that the permit condition would prevent or impair in any significant respect the expeditious construction and operation of the project.

(4) The Federal Coordinator may review a permit condition even if the permittee has not requested review.

(b) Materials necessary for review.

If the Federal Coordinator receives a request for review of any condition, the OFC will notify the issuing agency of the request. The OFC will need the following information from the agency:

(1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not yet been issued, a statement addressing whether agency practice or regulations would allow OFC to discuss the proposed condition with the applicant.

(c) Permit condition review.

In determining whether a proposed permit condition would prevent or impair expeditious construction and operation of the project, the OFC will consider:

(1) Any delays in project construction and operation caused by the condition.

(2) All other available information, including, if available, the project's cost of meeting the condition.

(3) The statutory and regulatory basis for the condition, as provided by the issuing agency.

(4) The views of the applicant.

(d) The OFC will endeavor to complete its review within 30 days after a request from an applicant or permittee.

(e) The Federal Coordinator's decision

(1) The Federal Coordinator will determine whether the proposed condition would prevent or impair in any significant respect the expeditious construction and operation of an Alaska natural gas transportation project or expansion of that project. The Federal Coordinator's decision will be sent to the agency and the applicant or permittee.

(2) If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the OFC will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

Dated: March 9, 2012.

Larry Persily,

Federal Coordinator.

[FR Doc. 2012–6406 Filed 3–22–12; 8:45 am]

BILLING CODE 6820–TP–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2012]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Application for Manufacturing Authority; Morgan Fabrics Corporation (Upholstered Furniture Covering Sets), Verona, MS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting manufacturing authority on behalf of Morgan Fabrics Corporation (MFC), to manufacture upholstered furniture covering sets under FTZ procedures within FTZ 158. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 19, 2012.

The MFC facility (33 employees) is located at 108 Lipford Road within the Tupelo Lee Industrial Park (Site 17) in Verona, Lee County, Mississippi. The application proposes that MFC would utilize foreign-origin ''micro-denier suede'' fabric (up to 3 million square yards per year) to be cut and sewn into upholstery covering sets (*i.e.,* furniture parts) under FTZ procedures. The finished covering sets (HTSUS 9401.90; duty free) would be shipped from the zone to U.S. furniture manufacturing plants where they would be incorporated into upholstered furniture.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign origin, micro-denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7–17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that MFC does not seek FTZ benefits on any other foreign fabrics that the company may use in production at the facility (*i.e.,* full duties would be paid on all such fabrics).

On foreign micro-denier suede fabric used in production for the U.S. market, the company would be able to choose the finished upholstery covering set (*i.e.,* furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into covering sets, at which time they would be entered for consumption from the zone. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 22, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 6, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: March 19, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–7059 Filed 3–22–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2012]

Foreign-Trade Zone 64—Jacksonville, FL; Application for Reorganization (Expansion of Service Area) Under the Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Jacksonville Port Authority, grantee of FTZ 64, requesting authority to reorganize its zone to expand its service area under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade

Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 19, 2012.

FTZ 64 was approved by the Board on December 29, 1980 (Board Order 170, 46 FR 1330, 1/6/1981) and expanded on October 7, 2008 (Board Order 1579, 73 FR 61781, 10/17/2008). FTZ 64 was reorganized under the ASF on May 6, 2011 (Board Order 1759, 76 FR 28418, 5/17/11).

The zone project currently has a service area that includes the counties of Baker, Clay, Columbia, Duval and Nassau, Florida. The applicant is requesting authority to expand the service area of the zone to include Putnam, St. Johns and Bradford Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is within and adjacent to the Jacksonville Customs and Border Protection port of entry.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 22, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 6, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: March 19, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–7061 Filed 3–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Sodium Hexametaphosphate From the People's Republic of China: Preliminary Results of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting the second administrative review of the antidumping duty order on sodium hexametaphosphate (''sodium hex'') from the People's Republic of China (''PRC'') for the period of review (''POR'') March 1, 2010, through February 28, 2011. The Department has preliminarily determined that sales have been made below normal value (''NV'') by Hubei Xingfa Chemical Group Co., Ltd. (''Hubei Xingfa''). If these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone 202.482.0413.

SUPPLEMENTARY INFORMATION:

Case Schedule

On April 27, 2011, the Department published the notice of initiation of the administrative review of sodium hex from the PRC for one company, Hubei Xingfa.[1] On November 18, 2011 the Department extended the deadline for the preliminary results of this review to January 30, 2012.[2] On January 25, 2012, the Department extended the deadline for the preliminary results of this review to March 15, 2012.[3]

Submissions by Interested Parties

On April 29, 2011, the Department issued Hubei Xingfa the antidumping duty questionnaire. From June 3, 2011, to January 20, 2012, Hubei Xingfa submitted responses to the Department's antidumping duty questionnaire and supplemental questionnaires.

On June 6, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (''SV'') data.[4] Between September 15, 2011, and January 20, 2012, Hubei Xingfa and Petitioners[5] submitted comments on surrogate country selection and information to value factors of production (''FOP'').

Scope of the Order

The merchandise subject to this review is sodium hexametaphosphate. Sodium hexametaphosphate is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating $NaPO_3$ units. Sodium hexametaphosphate has a P_2O_5 content from 60 to 71 percent. Alternate names for sodium hexametaphosphate include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC–N–FOS. Sodium hexametaphosphate is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service (''CAS'') has assigned the name ''Polyphosphoric Acid, Sodium Salt'' to sodium hexametaphosphate. The CAS registry number is 68915–31–1. However, sodium hexametaphosphate is commonly identified by CAS No. 10124–56–8 in the market. For purposes of the review, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this review includes sodium hexametaphosphate in

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011) (''*Initiation*'').

[2] *See Second Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Extension of Preliminary Results,* 76 FR 73599 (November 29, 2011).

[3] *See Second Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Extension of Preliminary Results,* 77 FR 6060 (February 7, 2012).

[4] *See* letter to All Interested Parties, ''Second Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Selection of a Surrogate Country,'' dated June 6, 2011 (''Surrogate Country Letter'').

[5] ICL Performance Products and Innophos, Inc. (collectively, ''Petitioners'').

all grades, whether food grade or technical grade. The product covered by this review includes sodium hexametaphosphate without regard to chain length *i.e.,* whether regular or long chain. The product covered by this review includes sodium hexametaphosphate without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form, and whether or not in solution.

However, the product covered by this review does not include sodium hexametaphosphate when imported in a blend with other materials in which the sodium hexametaphosphate accounts for less than 50 percent by volume of the finished product.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[6] None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department.[7] Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus, should be assessed a single antidumping duty rate.[8]

In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[9] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In this administrative review, the Department received a completed response to the Section A portion of the NME antidumping questionnaire from Hubei Xingfa, which contained information pertaining to the company's eligibility for a separate rate.[10]

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[11] The evidence provided by Hubei Xingfa supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with Hubei Xingfa's business and export licenses; (2) there are applicable legislative enactments decentralizing control of companies; and (3) there are formal measures by the government decentralizing control of companies.[12]

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[13] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Hubei Xingfa supports a preliminary finding of *de facto* absence of government control based on the following: (1) The company sets its own export prices independent of the government, and without the approval of a government authority; (2) the company has authority to negotiate and sign contracts and other agreements; (3) the company has autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.[14] Therefore, the Department preliminarily finds that Hubei Xingfa has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''*Normal Value''* section below and in the surrogate values memorandum.[15]

As discussed in the ''*Non-Market Economy Country Status''* section, above, the Department considers the

[6] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006).

[7] *See* section 771(18)(C)(i) of the Act.

[8] *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[9] *See Initiation.*

[10] *See* Hubei Xingfa's Section A questionnaire response dated June 3, 2011 (''AQR'') and Hubei Xingfa's supplemental Section A questionnaire response dated October 24, 2011 (''SAQR'').

[11] *See Sparklers,* 56 FR at 20589.

[12] *See* Hubei Xingfa's AQR at 1–5 and Exhibits 4 and 5; *see also* Hubei Xingfa's SAQR at 4.

[13] *See Silicon Cafrbide,* 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[14] *See* Hubei Xingfa's AQR at 5–9 and Exhibit 7; *see also* Hubei Xingfa's SAQR at 5.

[15] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Case Analyst, Office 9, ''Second Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results,'' dated concurrently with this notice (''Surrogate Values Memo'').

PRC to be an NME country. The Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand and Ukraine are countries comparable to the PRC in terms of economic development.[16] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries.[17]

Based on publicly available information placed on the record, the Department determines that Thailand is a reliable source for surrogate values because Thailand is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of comparable, and has publicly available and reliable data. Furthermore, all surrogate values placed on the record by the parties were obtained from sources in Thailand.[18] Accordingly, the Department has selected Thailand as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Fair Value Comparisons

To determine whether sales of sodium hex to the United States by Hubei Xingfa were made at less than normal value, the Department compared the export price (''EP'') to NV, as described in the ''*U.S. Price,*'' and ''*Normal Value*'' sections below.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Hubei Xingfa, because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and foreign brokerage and handling. For the services provided by an NME vendor or paid for using an NME currency, we based the deduction of these movement charges on SVs.[19]

Normal Value

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Hubei Xingfa for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each import SV a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate.[20] Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the SVs, where appropriate, using the Thai Producer Price Index (''PPI''), or Indonesian PPI, as published in the International Monetary Fund's *International Financial Statistics*.[21] For further detail, *see* the Surrogate Values Memo.

The Department used Thai import statistics from Global Trade Atlas (''GTA'')[22] to value the raw material and packing material inputs that Hubei Xingfa used to produce subject merchandise during the POR, except where listed below. Consistent with the Department's long-standing practice, the Department has disregarded import prices that we have reason to believe or suspect may be subsidized.[23] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia and South Korea because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[24] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia and South Korea may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[25] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies. Therefore, based on the information currently available, we have not used import prices from India, Indonesia or South Korea when calculating import-based SVs. For further detail, *see* the Surrogate Values Memo.

We did not value phosphate rock or ferro-phosphorous using Thai import statistics. Regarding phosphate rock, Petitioners proposed that the Department value phosphate rock using Thai Harmonized Tariff Schedule (''HTS'') 2510.10.10 (''Natural Calcium Phosphates * * *Apatite''), whereas Hubei Xingfa proposed HTS 2510.10.90 (''Natural Calcium Phosphates * * * Other'') as the correct value. Because record evidence indicates that neither of these values is specific to phosphate rock, we valued phosphate rock using HTS 2510.10.10 (''Natural Calcium Phosphates * * * Unground''), from Indonesia.[26] For further discussion of

[16] *See* Surrogate Country Letter at Attachment I.

[17] *See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process,* dated March 1, 2004.

[18] *See* Surrogate Values Memo.

[19] *See* Surrogate Values Memo for details regarding the surrogate values for movement expenses.

[20] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

[21] *See* Surrogate Values Memo.

[22] Published by Global Trade Information Services, Inc. GTA reports import statistics, such as those from Thailand, India and Indonesia, in the original reporting currency and, thus, these data correspond to the original currency value reported by each country.

[23] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) at 590; *see, e.g., First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 19613 (April 15, 2010) (''*First Review Prelim*''), unchanged in *First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review,* 75 FR 64695 (October 20, 2010) (''*First Review Final*'').

[24] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea: Continuation of Antidumping and Countervailing Duty Orders,* 77 FR 264 (January 4, 2012); *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20.

[25] *See First Review Prelim,* unchanged in *First Review Final.*

[26] *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary*

Continued

this issue, *see* the Surrogate Values Memo.

Regarding ferro-phosphorous, both parties provided import data from Thailand to value ferro-phosphorous. Hubei Xingfa proposed that the Department rely on Thai HTS 7202.99.00, (''Ferro alloys other'') to value ferro-phosphorous, whereas Petitioners suggested 7202.99.11, (''Ferro Alloys NES''). We find, however, that neither of the proposed Thai HTS categories is sufficiently specific to the input in question, as both are basket categories containing many types of ferro-alloys. Therefore we have valued ferro-phosphorous using HTS 7202.99.11, described as ''Ferro-phosphorous,'' from India.[27] For further discussion of this issue, *see* the Surrogate Values Memo.

On June 21, 2011, the Department announced its new methodology to value the cost of labor in NME countries.[28] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization's *Yearbook of Labor Statistics.*

For this review the Department found that Thailand last reported industry-specific data in Chapter 6A, under Sub-Classification 24 of the ISIC-Revision 3, in 2000. However, more recently Thailand reported total manufacturing wage data under Chapter 6A in 2005. To calculate the labor value in these preliminary results, the Department relied on total manufacturing wage data from Chapter 6A, reported by Thailand in 2005, because these data are more contemporaneous with the POR than the data reported in 2000. We further inflated the labor value using the consumer price index (''CPI'') for Thailand to be contemporaneous with the POR. For the preliminary results the calculated wage rate is 135.27 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memo.

Pursuant to *Labor Methodologies,* the Department considered whether financial ratios required adjustment to account for any labor expenses that might also be included in the financial ratios. However, because the record evidence did not indicate that any labor expenses were included in the financial ratios, no adjustments were necessary. *See* Surrogate Values Memo.

To value truck freight expenses, we used the World Bank's *Doing Business 2012: Thailand,* which we find to be specific to the cost of shipping goods in Thailand, and representative of a broad market average.[29] Because this value was not contemporaneous to the POR, we deflated it using the Thai CPI. This report gathers information concerning the cost to transport a 20-foot container of dry goods from the largest city to the nearest seaport. Because there is no Thai value for inland freight charges by boat on the record, we valued inland freight charges by boat using Indonesian freight rates that were published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi.[30] Rates were given on a per cubic meter basis, by city, which we converted to a metric ton basis. Because this value is not contemporaneous with the POR, we deflated it using the Indonesian CPI. In addition, we valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand published in the World Bank's *Doing Business 2012: Thailand.* The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand. Because this value was not contemporaneous to the POR, we deflated it using the Thai CPI. For further discussion of movement expenses, *see* the Surrogate Values Memo.

To value the surrogate financial ratios for overhead, selling, general and administrative expenses and profit, the Department used the 2009–2010 financial statement of Aditya Birla (Thailand) (''Aditya''). Aditya is a producer of sodium hex in Thailand. Its financial ratio expenses are comparable to Hubei Xingfa's financial ratios by virtue of each company's production of identical merchandise. However, the Department has determined that the financial statement of Aditya does not permit us to accurately calculate overhead, because it does not contain information upon which to apply a reasonable methodology to apportion raw material expenses and consumable expenses. As a result, the Department has used the financial statement from Aditya's parent company, Aditya Birla Group, to calculate the overhead ratio.[31]

When the Department is unable to segregate and, therefore, exclude energy costs from the calculation of the surrogate financial ratio, it is the Department's practice to disregard the respondent's energy inputs in the calculation of NV in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.[32] Because Aditya financial statement does not identify energy expenses, we disregarded Hubei Xingfa's energy inputs in the NV calculation.

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margin exists for the period March 1, 2010, through February 28, 2011:

Exporter	Margin
Hubei Xingfa	52.39%

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of

Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review, 76 FR 12054 (March 4, 2011), (where the Department valued shrimp by-products with a surrogate value from Indonesia, when a value was not available in the primary surrogate country), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative* Review, 75 FR 56158 (September 12, 2011).

[27] *See, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 14e (where the Department valued a by-product using a U.S. price due the specificity of the value).

[28] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*''). This notice followed the decision in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), where the Federal Circuit found that the Department's regression-based method for calculating wage rates, as stipulated by section 351.408(c)(3) of the Department's regulations, uses data not permitted by the statutory requirements set forth in section 773(c)(4) of the Act (*i.e.,* 19 U.S.C. 1677b(c)).

[29] *See* Surrogate Value Memo, at 7–8, and Exhibit 6, relying on information found at *http://www.doingbusiness.org.*

[30] *Id.,* at 8, and Exhibit 6.

[31] *See Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 3 (where the Department was unable to calculate a financial ratio based on a lower level financial statement, the Department used a consolidated financial statement).

[32] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838, 16839 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 2.

this notice, in accordance with section 351.224(b) of the Department's regulations.

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Pursuant to section 351.301(c)(1) of the Department's regulations, submissions of factual information may be rebutted, however the Department reminds that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department will not accept the submission of additional, alternative surrogate value information submitted with rebuttal submissions, where that information has not previously been part of the review record, pursuant to section 351.301(c)(1) of the Department's regulations.[33] Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must include an explanation to indicate the record information the new information is rebutting, clarifying, or correcting.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[34] Rebuttal briefs and rebuttals to written comments are limited to issues raised in such briefs or comments, and may be filed no later than five days after the deadline for filing case briefs.[35] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and 3) a table of authorities.[36]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with section 351.212(b)(1) of the Department's regulations, for Hubei Xingfa, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Because Hubei Xingfa reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[37] Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR.[38]

To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in section 351.106(c)(2) of the Department's regulations, we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[39]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For Hubei Xingfa, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 188.05 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility, under section 351.402(f) of the Department's regulations, to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i) of the Act, and section 351.221(b)(4) of the Department's regulations.

Dated: March 13, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7060 Filed 3–22–12; 8:45 am]

BILLING CODE 3510–DS–P

[33] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[34] *See* section 351.309(c)(ii) of the Department's regulations.

[35] *See* section 351.309(d) of the Department's regulations.

[36] *See* section 351.309(c) and (d) of the Department's regulations.

[37] *See* section 351.212(b)(1) of the Department's regulations.

[38] *Id.*

[39] *See* section 351.106(c)(2) of the Department's regulations.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–974]

Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain steel wheels (steel wheels) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: John Conniff (for the Centurion Companies)

at 202–482–1009, Robert Copyak (for the Jingu Companies) at 202–482–2209, and Kristen Johnson (for the Xingmin Companies) at 202–482–4793, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

This investigation, which covers 28 programs, was initiated on April 19, 2011.[1] The petitioners in this investigation are Accuride Corporation and Hayes Lemmerz International, Inc. The respondents in this investigation are: Jining Centurion Wheel Manufacturing Co., Ltd. (Centurion),[2] Shandong Xingmin Wheel Co., Ltd. (Xingmin),[3] and Zhejiang Jingu Company Limited (Zhejiang Jingu).[4] The Department initially, in addition to Zhejiang Jingu, selected Jiangsu Yuantong Auto Parts Co., Ltd. (Yuantong) and Zhejiang Jinfei Machinery Group Co. Ltd. (Zhejiang Jinfei) to be mandatory respondents. Yuantong and Zhejiang Jinfei, however, submitted responses to the Department's shipment questionnaire in which each company certified that it did not export subject merchandise to the United States during the period of investigation (POI).[5] We analyzed entry documents obtained from U.S. Customs and Border Protection (CBP) and found that the documentation confirmed the non-shipment claims of Yuantong and Zhejiang Jinfei.[6]

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010, which corresponds to the PRC's most recently completed fiscal year at the time we initiated this investigation. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the Department published the *Preliminary Determination* on September 6, 2011.[7] On September 1, 2011, petitioners submitted a critical circumstances allegation. On September 2, 2011, we issued a fourth supplemental questionnaire to the Government of the People's Republic of China (GOC). On September 7, 2011, petitioners filed new subsidy allegations concerning land provided for less than adequate remuneration to the Centurion Companies and Jingu Companies. On September 9, 2011, we issued to the respondent companies a critical circumstances questionnaire requesting monthly volume and value data for shipments of subject merchandise to the United States. Also, on September 9, 2011, we received the GOC's response to the third supplemental questionnaire.

On September 21, 2011, the Xingmin Companies filed a response to the critical circumstances questionnaire. On September 23, 2011, the GOC submitted its fourth supplemental questionnaire response. On September 26, 2011, the Centurion Companies, Jingu Companies, and Xiamen Sunrise Wheel Group Co., Ltd. (Sunrise) each filed a response to the critical circumstances questionnaire.[8]

On October 3, 2011, the GOC submitted certifications conforming to the formats provided for in the *Supplemental Interim Final Rule*[9] to replace those certifications it had previously filed with the Department that did not conform with the format provided in the *Interim Final Rule*.[10]

On October 5, 2011, we determined that the petitioners' new subsidy allegations were untimely filed and rejected the September 7, 2011, submission.[11] On October 6, 2011, the GOC requested a hearing in this investigation.

On November 2, 2011, we issued a memorandum to the file regarding the scope of the investigation. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Scope of the Investigation,'' (November 2, 2011). In the memorandum, we explained that because the language of the scope covers steel wheels ranging from 18 to 24.5 inches in diameter regardless of use, the Department preliminarily determined in *Steel Wheels AD Preliminary Determination*[12] to add all of the Harmonized Tariff Schedule of the United States (HTSUS) categories suggested by CBP to the scope of the AD and CVD investigations on steel wheels from the PRC.

On November 18, 2011, we issued a verification outline to the Xingmin Companies. On November 23, the Xingmin Companies filed additional factual information. On November 28, 2011, the GOC submitted new factual information. On December 2, 2011, the Department issued letters to the Xingmin Companies and the GOC rejecting their additional factual information submissions because those submissions contained untimely filed information. On December 2 and 5, 2011, the Xingmin Companies and the GOC, respectively, re-filed their additional factual submissions excluding that information found by the Department to be untimely. On December 5 and 6, 2011, the GOC and Xingmin Companies, respectively, submitted comments disagreeing with Department's finding that their initial additional factual information submissions contained untimely information. Also, on December 5 and 6, 2011, the Department conducted verification of the questionnaire responses submitted by the Xingmin Companies.

On December 6, 2011, we issued a post-preliminary questionnaire to all interested parties regarding the scope of the AD and CVD investigations on steel

[1] *See Certain Steel Wheels From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 23302 (April 26, 2011).

[2] We use the term Centurion Companies to refer collectively to Centurion and its cross-owned affiliates under examination in this investigation.

[3] We use the term Xingmin Companies to refer collectively to Xingmin and its cross-owned affiliates under examination in this investigation.

[4] We use the term Jingu Companies to refer collectively to Zhejiang Jingu and its cross-owned affiliates under examination in this investigation.

[5] *See* Yuantong's and Zhejiang Jinfei's Shipment Questionnaire Responses (May 20, 2011). The public version of each response and all other public versions and public documents for this investigation are available electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS), located in the Department's Central Records Unit (CRU), Room 7046 of the main Commerce building.

[6] *See* Memorandum to the File from John Conniff, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Examination of Entry Documentation,'' (August 29, 2011).

[7] *See Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 76 FR 55012 (September 6, 2011) (*Preliminary Determination*).

[8] Sunrise, a Chinese producer of subject merchandise, had requested to be designated as a voluntary respondent. However, because we determined that the Department had resources to investigate only three companies, we did not designate Sunrise as a voluntary respondent in this investigation. *See Preliminary Determination,* 76 FR at 55013.

[9] *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011) (*Supplemental Interim Final Rule*).

[10] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*).

[11] *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Robert Copyak, Senior Financial Analyst, regarding ''Decision Memorandum Regarding Petitioners' New Subsidy Allegations,'' (October 5, 2011).

[12] *See Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703 (November 2, 2011) (*Steel Wheels AD Preliminary Determination*).

wheels from the PRC.[13] On December 13, 2011, petitioners, the Xingmin Companies, Jingu Companies, and Jiaxing Stone Wheel Co., Ltd.,[14] each submitted a post-preliminary supplemental questionnaire response to the Department. On December 22 and 23, 2011, Blackstone/OTR LLC and OTR Wheel Engineering, Inc. (collectively, Blackstone/OTR), a U.S. importer of the subject merchandise, and petitioners, respectively, submitted rebuttal comments to the post-preliminary supplemental questionnaire responses.

We issued the verification reports for the Xingmin Companies on January 6, 2012. We issued the verification reports for the Centurion Companies and the GOC on January 30, 2012. We issued the verification report for the Jingu Companies on January 31, 2012.

On February 7, 2012, case briefs were submitted by the GOC, Centurion Companies, Jingu Companies, Xingmin Companies, and Blackstone/OTR. A rebuttal brief was filed by petitioners on February 13, 2012. On February 22, 2012, the GOC notified the Department that it was withdrawing its request for a hearing in this investigation.

On March 2, 2012, we published the *Preliminary Critical Circumstances Determination,*[15] in which the Department discussed the arguments made by petitioners.[16] On March 6, 2012, case briefs were submitted by interested parties concerning the *Preliminary Critical Circumstances Determination* and rebuttal briefs were filed on March 9, 2012.

On March 6, 2012, the Department rejected Blackstone/OTR's February 7, 2012, case brief because it contained new factual information. Blackstone/OTR re-filed is case brief excluding the new factual information on March 8, 2012.

Scope of Investigation

The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.

Imports of the subject merchandise are provided for under the following categories of the HTSUS: 8708.70.05.00, 8708.70.25.00, 8708.70.45.30, and 8708.70.60.30. Imports of the subject merchandise may also enter under the following categories of the HTSUS: 8406.90.4580, 8406.90.7500, 8420.99.9000, 8422.90.1100, 8422.90.2100, 8422.90.9120, 8422.90.9130, 8422.90.9160, 8422.90.9195, 8431.10.0010, 8431.10.0090, 8431.20.0000, 8431.31.0020, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, 8431.43.8060, 8431.49.1010, 8431.49.1060, 8431.49.1090, 8431.49.9030, 8431.49.9040, 8431.49.9085, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.1000, 8433.90.5020, 8433.90.5040, 8436.99.0020, 8436.99.0090, 8479.90.9440, 8479.90.9450, 8479.90.9496, 8487.90.0080, 8607.19.1200, 8607.19.1500, 8708.70.1500, 8708.70.3500, 8708.70.4560, 8708.70.6060, 8709.90.0000, 8710.00.0090, 8714.19.0030, 8714.19.0060, 8716.90.1000, 8716.90.5030, 8716.90.5060, 8803.20.0015, 8803.20.0030, and 8803.20.0060. These HTSUS numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On May 20, 2011, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of certain steel wheels.[17]

Critical Circumstances

In the *Preliminary Critical Circumstances Determination,* the Department concluded that critical circumstances do not exist with respect to steel wheels from the PRC produced and exported by the Jingu Companies, the Centurion Companies, and the Xingming Companies, in accordance with section 703(e)(1) of the Act. *See Preliminary Critical Circumstances Determination,* 77 FR at 12813–12814. However, in the *Preliminary Critical Circumstances Determination* the Department concluded that critical circumstances exist for imports from ''all other'' exporters of steel wheels from the PRC. *Id.* Our analysis of the results of verification and the comments submitted by interested parties has not led us to change our findings from the *Preliminary Critical Circumstances Determination.* Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from ''all other'' exporters of steel wheels from the PRC.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this investigation are addressed in the Issues and Decision Memorandum, dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete

[13] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Post-Preliminary Supplemental Questionnaire Issued to All Interested Parties,'' (December 6, 2011).

[14] A Chinese producer of steel wheels.

[15] *See Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Negative Determination of Critical Circumstances,* 77 FR 12812 (March 2, 2012) (*Preliminary Critical Circumstances Determination*).

[16] In the *Preliminary Critical Circumstances Determination,* the Department stated the following:

Petitioners provided Census Bureau Data, which they contend demonstrate that imports of subject merchandise increased by more than 15 percent, which is required to be considered ''massive'' under section 351.206(h)(2) of the Department's regulations. Petitioners submit that, by volume, imports increased approximately 48 percent from 510,174 wheels in the first quarter of 2011, to 753,604 wheels in the second quarter of 2010. *Id.* at 3 and Exhibit 1. Petitioners also contend that, by value, imports increased approximately 40 percent, from $17,787,704 in the first quarter of 2011, to $24,893,481 in the second quarter of 2010. *Id.*

See 77 FR at 12812. In discussing the second quarter import data supplied by petitioners we inadvertently referred to 2010 rather than 2011.

[17] *See Certain Steel Wheels From China,* Investigation Nos. 701–TA–478 and 731–TA–1182 (Preliminary), 76 FR 29265 (May 20, 2011).

version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for subject merchandise produced and exported by each company under investigation. We determine the total estimated net countervailable subsidy rates to be:

Producer/exporter	Net subsidy *ad valorem* rate (percent)
Jining Centurion Wheel Manufacturing Co., Ltd. (Centurion) and Jining CII Wheel Manufacture Co., Ltd. (Jining CII) (collectively the Centurion Companies)	25.66
Shandong Xingmin Wheel Co., Ltd. (Xingmin) and Sino-tex (Longkou) Wheel Manufacturers Inc. (Sino-tex) (collectively, the Xingmin Companies)	32.62
Zhejiang Jingu Company Limited (Zhejiang Jingu), Chengdu Jingu Wheel Co., Ltd. (Chengdu), Zhejiang Wheel World Industrial Co., Ltd. (Zhejiang Wheel World), and Shanghai Yata Industrial Co., Ltd. (Shanghai Yata) (collectively the Jingu Companies)	38.32
All Others	34.55

Section 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. The all others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, all three individual rates can be used to calculate the all others rate. Therefore, we have assigned the weighted-average of these three individual rates to all other producers/exporters of steel wheels from the PRC.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed CBP to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after September 6, 2011, the date of the publication of the *Preliminary Determination* in the **Federal Register.** Subsequently, as a result of our *Preliminary Critical Circumstances Determination,* we instructed CBP to suspend liquidation of all entries of subject merchandise from ''all other'' exporters of steel wheels from the PRC which were entered or withdrawn from warehouse, for consumption on or after June 8, 2011, which is 90 days prior to the date of publication in the **Federal Register** of the *Preliminary Determination.*

In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 4, 2012, but to continue the suspension of liquidation of all entries from September 6, 2011, through January 3, 2012.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 16, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of CVD Law to Non-Market Economies (NMEs)
Comment 2: Application of CVD Law to NMEs Results in Double-Counting
Comment 3: Whether the Burden of Proving Double-Counting Lies With Respondents
Comment 4: Proper ''Cut-Off'' Date To Be Applied in the Investigation
Comment 5: Whether the Department's Examination of Additional Subsidy Program Was Lawful
Comment 6: Whether It Was Appropriate for the Department To Reject the Xingmin Companies' Factual Information
Comment 7: Whether It Was Appropriate for the Department To Reject Centurion Companies' Factual Information
Comment 8: Whether Certain Hot-Rolled Steel (HRS) Producers Constitute Government Authorities That Provide a Financial Contribution
Comment 9: Whether Purchases of HRS From Domestic Trading Companies Constituted a Financial Contribution
Comment 10: Whether the GOC Acted to the Best of Its Ability To Provide Information Regarding the Ownership Status of HRS Producers
Comment 11: The Extent To Which Chinese Communist Party (CCP) Membership is Relevant in Determining Whether HRS Producers Are Government Authorities Capable of Providing a Financial Contribution
Comment 12: Whether the Department Applied Consistent Treatment of HRS Producers In Terms of Ownership Status
Comment 13: Data Source To Be Used for the Jingu Companies Under the HRS for Less Than Adequate Remuneration (LTAR) Program
Comment 14: Whether the Department Should Use a Tier-One, In-Country

Benchmark in the Benefit Calculation of the HRS for LTAR Program
Comment 15: Use of HRS Benchmark Data That More Accurately Correspond to Respondents' Domestic Purchases of HRS
Comment 16: Whether the Department Should Reduce the HRS Benchmark to Account for the Cash Discounts That the Jingu Companies Receive From Their HRS Suppliers
Comment 17: Whether the HRS Benchmark Prices Should Be Adjusted Downward To Reflect the Prices the Jingu Companies Paid for Non-Pickled and Non-Oiled HRS
Comment 18: Whether the Provision of HRS for LTAR Is Specific Under the CVD Law
Comment 19: Whether It Was Appropriate To Apply AFA With Regard to the GOC Concerning the Provision of Electricity for LTAR Program
Comment 20: Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution
Comment 21: Whether Banks in the PRC Are Government Authorities Capable of Providing a Financial Contribution
Comment 22: Whether a Causal Nexus Exists Between the GOC's Industrial Policies and Loans Received by Respondents
Comment 23: Whether the Department Should Use a PRC-Based Tier-One or Tier-Two Benchmark in the Benefit Calculations of the Policy Lending Program
Comment 24: Whether the Department's Short-Term and Long-Term Benchmark Interest Rate Calculations Are Flawed
Comment 25: Whether Tax Benefits Under Article 28 of the Foreign Invested Enterprise (FIE) Tax Law Are Specific
Comment 26: Revision to Import Duty Rate for Testing Machinery
Comment 27: The Sales Denominator To Be Used in the Benefit Calculations of the Jingu Companies
Comment 28: Use of Revised Data To Calculate Benefits Received by the Centurion Companies Under the Two Free, Three Half Program
Comment 29: Whether IPO Grants From the Fuyang and Hangzhou City Governments Are Countervailable
Comment 30: Whether the Administrative Record of This Case Supports a Finding of Critical Circumstances
Comment 31: Whether the Scope Should Exclude Off-Road/Non-Department of Transportation Specification Stamped Wheels

[FR Doc. 2012–7055 Filed 3–22–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–973]

Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 23, 2012.

SUMMARY: On November 2, 2011, the Department of Commerce (''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') in the antidumping investigation of certain steel wheels (''steel wheels'') from the People's Republic of China (''PRC'').[1] We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our margin calculations for the mandatory respondents. The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its *Preliminary Determination* of sales at LTFV on November 2, 2011. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on the *Preliminary Determination.*

On November 3, 2011, the Department issued a post-preliminary supplemental questionnaire to Zhejiang Jingu Company Limited (''Zhejiang Jingu'') and its affiliated exporter Shanghai Yata Industry Co., Ltd (''Yata'') (collectively ''Jingu''). On November 14, 2011, Jingu submitted its response to the Department's post-preliminary supplemental questionnaire. Also on November 14, 2011, Jingu and Jining Centurion Wheel Manufacturing Co., Ltd. (''Jining Centurion'') and its affiliated U.S. reseller, Centurion Wheel Manufacturing Company (''Centurion USA'') (collectively ''Centurion'') provided additional factual information pertaining to respondents' production experience.

Between November 21, 2011, and December 9, 2011, the Department conducted verifications of Jining Centurion and its affiliated U.S. reseller, Centurion USA. Between December 1, 2011, and December 9, 2011, the Department conducted verifications of Zhejiang Jingu and its affiliated exporter Yata. The Department released verification reports for each verification of Centurion and Jingu on January 10, 2012, and January 11, 2012, respectively. The Department also released an addendum to its verification report regarding Centurion on January 23, 2012. Accuride Corporation and Hayes Lemmerz International (''Petitioners'') submitted their comments regarding the Department's January 23, 2012, addendum on January 25, 2012.[2]

On December 19, 2011, Centurion and Jingu submitted publicly available surrogate value submissions. On December 29, 2011, Petitioners submitted rebuttal comments to Jingu's surrogate value submission. Case briefs were submitted on January 20, 2012, by the following parties: (1) Petitioners; (2) the Government of China; (3) Blackstone/OTR LLC and OTR Wheel Engineering, Inc. (collectively ''Blackstone''); (4) Jingu; and (5) Centurion. On January 25, 2012, Centurion and Petitioners submitted rebuttal briefs. On February 29, 2012, the Department met with counsel for Blackstone/OTR and Super Grip Corporation, an interested party in this proceeding. The Department met with counsel for Petitioners on March 2, 2012.

Scope Comments

Following the *Preliminary Determination,* on December 6, 2011, the Department issued a post-preliminary supplemental questionnaire to all interested parties requesting further information regarding various scope issues in this and the concurrent countervailing duty investigation on certain steel wheels from the PRC

[1] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703 (November 2, 2011) (''*Preliminary Determination*''). *Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703 (November 2, 2011) (''*Preliminary Determination*'').

[2] *See* the ''Verification'' section below for additional information.

related to: (1) The U.S. Department of Transportation's regulatory requirements for steel wheels; (2) steel wheel product specifications; and (3) additional off-highway uses for Petitioners' steel wheels.[3]

On December 13, 2011, the following parties submitted responses to the Department's scope supplemental questionnaire: (1) Petitioners; (2) Xiamen Sunrise Wheel Group Co., Ltd. (''Xiamen Sunrise'') and its affiliate, Xiamen Topu Import & Export Co., Ltd. (''Xiamen Topu''); (3) Jingu; (4) Blackstone; and (5) Jiaxing Stone Wheel Co., Ltd (''Jiaxing Stone''). On December 22, 2011, Blackstone submitted rebuttal comments to the Petitioners' scope supplemental questionnaire response. On December 23, 2011, Petitioners and Jingu also provided their rebuttal comments to parties' scope supplemental questionnaire responses.

Based on the Department's analysis of these comments and the factual records of these investigations, the Department continues to find that the scope of the investigation should not exclude off-the-road steel wheels.[4]

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.[5]

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''Act''), we verified the information submitted by Centurion and Jingu for use in our final determination. The Department used standard verification procedures, including the examination of relevant accounting and production records, as well as original source documents provided by respondents.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues which parties have raised and to which we have responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the *Preliminary Determination*

- The Department is using Thai import data to value respondents' pallet inputs, rather than the Indonesian data used for the *Preliminary Determination.*[7]
- To value inland truck freight, the Department is using an average of updated prices from the same source used in the *Preliminary Determination.*[8]
- The Department has revised Centurion and Jingu's margin calculations to incorporate minor corrections submitted at their respective verifications, as well as other minor discrepancies noted in their verification reports.[9]
- The Department finds that critical circumstances exist for the PRC-entity.

Scope of Investigation

The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (''HTSUS''): 8708.70.05.00, 8708.70.25.00, 8708.70.45.30, and 8708.70.60.30. Imports of the subject merchandise may also enter under the following categories of the HTSUS: 8406.90.4580, 8406.90.7500, 8420.99.9000, 8422.90.1100, 8422.90.2100, 8422.90.9120, 8422.90.9130, 8422.90.9160, 8422.90.9195, 8431.10.0010, 8431.10.0090, 8431.20.0000, 8431.31.0020, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, 8431.43.8060, 8431.49.1010, 8431.49.1060, 8431.49.1090, 8431.49.9030, 8431.49.9040, 8431.49.9085, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.1000, 8433.90.5020, 8433.90.5040, 8436.99.0020, 8436.99.0090, 8479.90.9440, 8479.90.9450, 8479.90.9496, 8487.90.0080, 8607.19.1200,

[3] *See* the Department's letter to all interested parties entitled, ''LTFV antidumping duty investigation of Certain Steel Wheels from the People's Republic of China: Post-Preliminary Request for Information,'' dated December 6, 2011 (''scope supplemental questionnaire'').

[4] For a complete discussion of the parties' comments and the Department's position, *see* Memorandum to Paul Piquado entitled ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Steel Wheels from the People's Republic of China,'' dated March 16, 2012, and incorporated herein by reference (''Issues and Decision Memorandum'') at Comment 1.

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* Memorandum from the Department entitled, ''Verification of the Sales Responses of Centurion Wheel Manufacturing Company (''Centurion USA'') in the Antidumping Duty Investigation of Certain Steel Wheels From the People's Republic of China,'' dated January 10, 2012 (''Centurion USA's Verification Report''); Memorandum from the Department entitled, ''Verification of the Sales Responses of Jining Centurion Wheel Manufacturing Company, Ltd. in the Antidumping Duty Investigation of Certain Steel Wheels From the People's Republic of China,'' dated January 10, 2012 (Jining Centurion's Verification Report''); Memorandum from the Department entitled, ''Verification of the Sales Information of Yata Industry Company, Ltd.'' dated January 11, 2012 (Yata's Verification Report''); and Memorandum from the Department entitled, ''Verification of the Sales and Factor Production Information of Zhejiang Jingu Company Limited'' dated January 11, 2012 (''Jingu's Verification Report'').

[7] *See* Comment 4 of the Issues and Decision Memorandum; *see also* Memorandum to the File entitled ''Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China (''PRC''): Final Determination Surrogate Value Memorandum,'' dated March 16, 2012 (''Surrogate Value Memorandum'').

[8] *See* Comment 5 of the Issues and Decision Memorandum; *see also* Surrogate Value Memorandum.

[9] *See* Comment 9 of the Issues and Decision Memorandum; *see also* Centurion USA's Verification Report, Jining *Centurion's* Verification Report, Yata's Verification Report, and Jingu's Verification Report; *see also* Memorandum from the Department entitled, ''Investigation of Certain Steel Wheels from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Zhejiang Jingu Company Limited (''Jingu'') and Shanghai Yata Industry Company Limited (''Yata''),'' dated March 16, 2012 (''Jingu's Final Analysis Memorandum''); and Memorandum from the Department entitled, ''Investigation of Certain Steel Wheels from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Jining Centurion Wheels Manufacturing Co., Ltd. and Centurion Wheel Manufacturing Company,'' dated March 16, 2012 (Centurion's Final Analysis Memorandum'').

8607.19.1500, 8708.70.1500, 8708.70.3500, 8708.70.4560, 8708.70.6060, 8709.90.0000, 8710.00.0090, 8714.19.0030, 8714.19.0060, 8716.90.1000, 8716.90.5030, 8716.90.5060, 8803.20.0015, 8803.20.0030, and 8803.20.0060. These HTSUS numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Surrogate Country

In the *Preliminary Determination,* the Department selected Indonesia as the appropriate surrogate country to use in this investigation.[10] For the final determination, since we received no comments on our decision, we continue to use Indonesia as the primary surrogate country.

Affiliation

In the *Preliminary Determination,* based on the evidence on the record, the Department preliminarily found that Zhejiang Jingu and Yata are affiliated, pursuant to section 771(33)(E) of the Act. In addition, based on the evidence presented in their respective questionnaire responses, we preliminarily found that Zhejiang Jingu and Yata should be treated as a single entity for the purposes of this investigation.[11] Since the *Preliminary Determination,* the Department has found no information to reverse this finding, nor have parties provided comment to rebut this finding. Therefore, the Department continues to find Yata and Zhejiang Jingu to be affiliated with each other pursuant to sections 771(33)(E) of the Act, for this final determination.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[12] In the *Preliminary Determination,* we found that the two mandatory respondents (*i.e.,* Centurion and Jingu), and the separate-rate respondents (*i.e.,* (1) Shandong Land Star Import & Export Co., Ltd. (''Shandong Land Star''), (2) Shandong Jining Wheel Factory (''Shandong Jining''), (3) Wuxi Superior Wheel Co., Ltd. (''Wuxi Superior''), (4) Shandong Xingmin Wheel Co. Ltd. (''Xingmin Wheel''), (5) Xiamen Sunrise, (6) Jiaxing Stone, (7) Xiamen Topu and (8) China Dongfeng Motor Industry Imp. & Exp. Co., Ltd. (''Dongfeng Motor'')) demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate-rate status.[13]

Margin for Non-Examined Separate Rate Companies

Consistent with the Department's practice, as the rate for non-examined entities which qualify for separate rate status, we have established a margin based on the rate calculated for the mandatory respondents, Centurion and Jingu.[14]

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA (*i.e.,* adverse facts available (''AFA'')) when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For this final determination, in accordance with section 776(b) of the Act, we have determined that the use of AFA is warranted for the PRC-wide entity as discussed below.

The PRC-Wide Rate

Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the companies listed under the ''Final Determination Margins'' section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.,* the PRC-wide rate) to all other exporters of subject merchandise from the PRC. These other companies did not demonstrate entitlement to a separate rate.[15] The PRC-wide rate applies to all entries of subject merchandise except for entries from the companies eligible for separate rate status.

In the *Preliminary Determination,* the Department preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. Further, we treated these PRC producers/exporters as part of the PRC-wide entity because they did not apply for a separate rate. As a result, we found that the use of FA was appropriate to determine the PRC-wide rate pursuant to section 776(a)(2)(A) of the Act.[16]

Because the PRC-wide entity did not respond to our requests for information, withheld information requested by the Department, and did not allow their information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination,* that the use of facts otherwise available is appropriate to determine the PRC-wide rate.

Thus, in the *Preliminary Determination,* the Department determined that, in selecting from among the FA, an adverse inference is appropriate because the PRC-wide

[10] *See Preliminary Determination,* 76 FR at 67708.

[11] *See* Memorandum from the Department entitled, ''Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China: Affiliation and Collapsing of Zhejiang Jingu Company Limited and Shanghai Yata Industry Company Limited,'' dated October 26, 2011.

[12] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) and 19 CFR 351.107(d).

[13] *See Preliminary Determination,* 76 FR at 67709–10.

[14] *See e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007)).

[15] *See e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000).

[16] *See Preliminary Determination,* 76 FR at 67710–11.

entity failed to cooperate by not acting to the best of its ability to comply with requests for information.[17] As AFA, we preliminarily assigned to the PRC-wide entity a rate of 193.54 percent, the highest rate from the petition.[18]

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA pursuant to section 776(b) of the Act and 19 CFR 351.308(c)(1), the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [19] It is also the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [20]

Generally, the Department finds selecting the highest rate on the record of the proceeding as AFA to be appropriate.[21] It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[22] In the instant investigation, as AFA, we have assigned to the PRC-wide entity the highest petition rate on the record of this proceeding that can be corroborated.[23] The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.'' [24] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[25]

It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.[26] Consistent with our practice, for the final determination we find that the highest rate in the petition of 193.54 percent is appropriate for the PRC-wide entity.[27] For the final determination, in accordance with section 776(c) of the Act, we corroborated our AFA margin using information submitted by Jingu. Specifically, we compared the normal values and net U.S. prices we calculated for Jingu in the final determination to the normal value and net U.S. price underlying the calculation of the 193.54 percent rate in the petition. We found that certain normal values we calculated for Jingu in this investigation were higher than or within the range of the normal value in the petition; we found that certain net U.S. prices we calculated for Jingu in this investigation were lower than or within the range of the U.S. price in the petition.[28]

Accordingly, we find this rate is reliable and relevant, considering the record information, and thus, has probative value. Additionally, by using information that was corroborated in the pre-initiation stage of this investigation and determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate ''to the extent practicable'' as provided in section 776(c) of the Act.[29] Therefore, with respect to the PRC-wide entity, for the final determination we have used, as AFA, the margin in the petition of 193.54 percent, as set forth in the notice of initiation. Given that numerous PRC-wide entities did not respond to the Department's requests for information, the Department concludes that the updated petition rate of 193.54 percent, as total AFA for the PRC-wide entity, is sufficiently adverse to prevent these respondents from benefitting from their lack of cooperation.[30]

The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Centurion, Jingu, Shandong Land Star, Shandong Jining, Wuxi Superior, Xingmin Wheel, Xiamen Sunrise, Jiaxing Stone, Xiamen Topu and Dongfeng Motor, as they have demonstrated eligibility for a separate rate. These companies and their corresponding antidumping duty cash deposit rates are listed below in the ''Final Determination'' section of this notice.

Critical Circumstances

In the *Preliminary Determination,* we determined that critical circumstances

[17] *See Id.*

[18] *See Id; see also Statement of Administrative Action accompanying the URAA,* H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (''SAA'').

[19] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[20] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005); *see also* SAA at 870.

[21] *See e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005)(unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 38366 (July 6, 2006) and accompanying Issues and Decision Memorandum at Comment 10).

[22] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at ''Facts Available.''

[23] *See Certain Steel Wheels From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 23294 (April 26, 2011)

[24] *See* SAA at 870.

[25] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997)).

[26] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)).

[27] *See, Certain Steel Wheels From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 23294 (April 26, 2011) (''*Initiation Notice*'').

[28] *See* Jingu's Final Analysis Memorandum.

[29] *See also* 19 CFR 351.308(d). *See, e.g.,* Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From the United Kingdom, 66 FR 40192 (August 2, 2001) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom, 67 FR 3146 (January 23, 2002).

[30] *See* SAA at 870.

do not exist for Jingu, separate rate respondents, or the PRC entity, but do exist with respect to imports from Centurion.[31]

Centurion, Jingu and the Separate Rate Respondents

On November 8, 2011, the Department issued a request to Centurion and Jingu for further information regarding monthly shipments of subject merchandise for the purposes of a final determination of critical circumstances. On November 14, 2011, both Centurion and Jingu submitted the requested monthly shipment data. Based on the updated shipment data received from respondents, the Department continues to find that critical circumstances do not exist for Jingu or the separate rate respondents, but do exist with respect to imports from Centurion.[32]

PRC–Wide Entity

With respect to the Department's preliminary determination that critical circumstances do not exist with respect to imports from the PRC entity,[33] we find that the *Preliminary Determination* was inconsistent with Department practice regarding this issue. Therefore, we have re-evaluated this issue for the final determination.

Because the PRC-wide entity did not cooperate with the Department by not responding to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC-wide entity for purposes of our critical circumstances analysis, and thus there is no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the FA in reaching the applicable determination under this title.

Furthermore, as noted in the *Use of Facts Available and Adverse Facts Available* section above, section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference. The PRC-wide entity did not respond to the Department's request for information. Thus, we are using FA, in accordance with section 776(a) of the Act, and, pursuant to section 776(b) of the Act, we also find that AFA is warranted because the PRC-wide entity has not acted to the best of its ability in not responding to the request for information. Accordingly, as AFA we find that there were massive imports of merchandise from the PRC-wide entity.[34]

Combination Rates

In the *Preliminary Determination,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[35] This practice is described in the *Separate Rate Policy Bulletin.*[36]

Final Determination

The simple-average dumping margin percentages are as follows:

Exporter	Producer	Percent margin
Zhejiang Jingu Company Limited	Zhejiang Jingu Company Limited	82.92
Shanghai Yata Industry Company Limited	Zhejiang Jingu Company Limited	82.92
Jining Centurion Wheels Manufacturing Co., Ltd	Jining Centurion Wheels Manufacturing Co., Ltd	44.96
Shandong Land Star Import & Export Co., Ltd	Shandong Shengtai Wheel Co., Ltd	63.94
Shandong Jining Wheel Factory	Shandong Jining Wheel Factory	63.94
Wuxi Superior Wheel Co., Ltd	Wuxi Superior Wheel Co., Ltd	63.94
Shandong Xingmin Wheel Co. Ltd	Shandong Xingmin Wheel Co. Ltd	63.94
Xiamen Sunrise Wheel Group Co., Ltd	Jining Centurion Wheels Manufacturing Co., Ltd	63.94
Jiaxing Stone Wheel Co., Ltd	Jiaxing Stone Wheel Co., Ltd	63.94
Xiamen Topu Import & Export Co., Ltd	Xiamen Sunrise Wheel Group Co., Ltd	63.94
Xiamen Topu Import & Export Co., Ltd	Jining Centurion Wheels Manufacturing Co., Ltd	63.94
China Dongfeng Motor Industry Imp. & Exp. Co., Ltd	Dongfeng Automotive Wheel Co., Ltd	63.94
PRC-Wide Entity		193.54

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection

[31] *See Preliminary Determination,* 76 FR at 67706–08.

[32] *See* Comment 6 of the Issues and Decision Memorandum; *see also* Memorandum from the Department entitled, ''Critical Circumstances Data and Calculations for the Final Determination,'' dated March 16, 2012.

[33] *See Preliminary Determination,* 76 FR at 67708.

[34] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59121 (November 17, 2009)(unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010)); *see also e.g., Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 75 FR 51004, 51013 (August 18, 2010)(unchanged in *Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 76 FR 1966 (January 11, 2011); *Certain Magnesia Carbon Bricks From the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances,* 75 FR 28237, 28239 (May 20, 2010)(unchanged in *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 75 FR 45468 (August 2, 2010)).

[35] *See Preliminary Determination,* 75 FR at 24905.

[36] *See* Memorandum entitled ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries'' dated April 5, 2005, available at *http://ia.ita.doc.gov/policy/index.html.*

(''CBP'') to continue to suspend liquidation of all imports of subject merchandise exported by Jingu or the separate rate respondents and entered or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. Further, in accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all imports of subject merchandise exported by Centurion on or after 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. Additionally, because we have found critical circumstances exist with respect to the PRC–Entity, we are directing CBP to suspend liquidation of all imports of subject merchandise exported by the PRC-entity on or after 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rates for the exporter/producer combinations listed in the chart above will be the rates we have determined in this final determination as listed in the chart; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

Additionally, as the Department has determined in its concurrent countervailing duty (''CVD'') steel wheels investigation that the merchandise under investigation exported by Zhejiang Jingu and Shanghai Yata benefitted from export subsidies,[37] we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the normal value exceeds the U.S. price for each of these companies, as indicated above, reduced by the respective amount determined to constitute export subsidies for each of these companies.[38]

With respect to Shandong Xingmin Wheel Co. Ltd., a separate rate recipient in this case, but a mandatory respondent in the companion CVD investigation that was found to have benefitted from export subsidies, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the lesser of its own CVD export subsidy rate or the average of the CVD export subsidy rates applicable to the mandatory respondents, on which Shandong Xingmin Wheel Co. Ltd.'s dumping margin is based. For the other separate rate recipients [39] in this case, excluding Shandong Xingmin Wheel Co. Ltd., who are receiving the All-Others rate in the CVD investigation, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the lesser of the average of the export subsidy rates determined in the CVD investigation or the average of the CVD export subsidy rates applicable to the mandatory respondents, on which the separate rate dumping margins are based.[40]

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will, within 45 days, determine whether the domestic industry in the United States is materially injured or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 16, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—List of Issues

Case Issues

Comment 1: Whether the Scope Should Exclude Off-Road/Non-DOT Specification Stamped Wheels.

Comment 2: Whether Double Remedies Arise From the Concurrent CVD Investigation.

Comment 3: Use of PT Prima Alloy's Financial Statement for Surrogate Financial Ratios.

Comment 4: Surrogate Value for Pallet Inputs.

Comment 5: Surrogate Value for Inland Freight.

Comment 6: Critical Circumstances.

Comment 7: Treatment of Administrative Expenses in Centurion's Indirect Selling Expense Calculation.

Comment 8: Hot-Rolled Steel Surrogate Value.

Comment 9: Corrections to Zhejiang Jingu's Databases.

[FR Doc. 2012–7047 Filed 3–22–12; 8:45 am]

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[37] *See Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination* and accompanying Issues and Decision Memorandum, dated concurrently with this notice (''CVD Final Determination'').

[38] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335, 20341 (April 19, 2010); *see also e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2004).

[39] The Department notes that it is our practice to adjust the separate rate companies by the lesser of the export subsidy rate (or average thereof) applicable to the mandatory respondents from which the separate rate is calculated, or the All-Others export subsidy rate from the CVD case (with exception of Shandong Xingmin Wheel Co. Ltd., which has its own calculated export subsidy rate). *See Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68407, 68421 (November 4, 2011).

[40] *See id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that imports of certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Continuation of Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0768 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On November 3, 2011, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of stilbenic OBAs from Taiwan. *See Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68154 (November 3, 2011) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the participating respondent, Teh Fong Min International, Co., Ltd. (TFM) and its U.S. affiliate, TFM North America, Inc. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the company.[1]

We received case briefs submitted by Clariant Corporation (hereinafter, the petitioner) and TFM on January 19, 2012. TFM and the petitioner submitted rebuttal comments on January 26, 2012, and January 27, 2012, respectively. At the request of both parties, we held a hearing on January 31, 2012, in the main Department of Commerce building.

Subsequent to the *Preliminary Determination,* the Department revised the program to ensure that it accurately reflected the methodological choices made in that determination. These revisions to the programming, had they been included in the preliminary determination, would not have altered the weighted average dumping margins calculated there. *See* ''Less-Than-Fair-Value Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan: Final Analysis Memorandum for Teh Fong Min International Co., Ltd. (1/1/2010—12/31/2010),'' dated concurrently with this notice (Final Analysis Memo) (with the revised preliminary AD margin program, output and weighted-average dumping margins).

Period of Investigation

The period of investigation (POI) is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The certain stilbenic OBAs covered by this investigation are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5- triazin-2-yl] [2] amino-2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by these investigations include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final stilbenic OBA products.

Excluded from this investigation are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [3] amino-2,2′-stilbenedisulfonic acid, C40H40N12O8S2 (''Fluorescent Brightener 71''). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active certain stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of certain stilbenic OBAs with each other, or of certain stilbenic OBAs with additives that are not certain stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum (I&D Memo) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The I&D Memo is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed and electronic versions of the I&D memo are identical in content.

Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

In the *Preliminary Determination,* based on the methodology we adopted

[1] *See* Memorandum to the File entitled ''Verification of the Sales Response of TFM North America, Inc. (TFMNA) in the Antidumping Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan,'' dated December 20, 2011, Memorandum to the File entitled ''Verification of the Sales Response of Teh Fong Min International Co., Ltd. in the Antidumping Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan,'' dated December 30, 2011, and Memorandum to the File entitled ''Verification of the Cost Response of Teh Fong Min International Corporation in the Antidumping Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan,'' dated January 6, 2012.

[2] The brackets above denote the chemical formula of the subject merchandise. This is not business-proprietary information.

[3] *Id.*

in *Nails,*[4] as modified in *Bags*[5] and *Wood Flooring*[6] to correct certain ministerial errors, we found that the overall proportion of TFM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act was insufficient to establish a pattern of export prices for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department determined that the criteria established in 777A(d)(1)(B)(i) of the Act had not been met and applied the average-to-average methodology to all sales.[7] No party has commented on this determination.

As in the *Preliminary Determination,* for TFM we continue to not find a pattern of export prices for comparable merchandise that differs significantly among customers, regions, or by time period. *See* Final Analysis Memo.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to TFM's margin calculation. For a discussion of these changes, *see* memorandum to Neal M. Halper from Gina K. Lee entitled, ''Constructed Value Calculation Adjustments for the Final Determination—Teh Fong Min International Co., Ltd. (''TFM'')'' (Final Cost Memo) and Final Analysis Memo, dated concurrently with this notice.

Date of Sale

Section 19 CFR 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

TFM reported its sales using shipment date as the date of sale, because shipment occurred prior to invoicing. The petitioner commented that contract date or contract amendment date is the appropriate date of sale for TFM's sales made pursuant to long-term contracts. Based on information on the record concerning these long-term contracts and consistent with the *Preliminary Determination* and *Yieh Phui,*[8] we find that the date of shipment is the appropriate date of sale. *See* I&D Memo published concurrently with this notice at Comment 1.

Constructed Value

As was explained in the *Preliminary Determination* (76 FR at 68134–68135), in accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value because TFM did not have a viable comparison market. We calculated constructed value in accordance with section 773(e) of the Act. Because TFM does not have a viable comparison market, in the *Preliminary Determination* we determined selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. In the *Preliminary Determination* we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in Taiwan, Everlight Chemical Industrial Corporation (Everlight). We received new factual information concerning the calculation of constructed value profit from parties since the *Preliminary Determination.* After considering the new factual information and comments we received concerning this issue, we find that, for this final determination, it is appropriate to use Everlight's colorants-sector profit to derive the constructed value profit. We have also excluded movement expenses and direct-selling expenses in our calculation of constructed value indirect selling expenses. *See* the discussion in the accompanying I&D Memo at Comments 2 through 6. *See also* Final Cost Memo and Final Analysis Memo.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of stilbenic OBAs from Taiwan which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) The rate for TFM will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 6.20 percent, as discussed in the ''All-Others Rate'' section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Teh Fong Min International Co., Ltd	6.20

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. TFM is the only respondent in this investigation for which the Department calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for TFM, 6.20 percent.[9]

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

[4] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (*Nails*).

[5] *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 55183 (October 27, 2009) (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value,* 75 FR 14569 (March 26, 2010)) (*Bags*).

[6] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying I&D Memo at Comment 4.

[7] *See also* Memorandum to Christian Marsh from Susan H. Kuhbach entitled, ''Less-Than-Fair Value Investigation on Certain Stilbenic Optical Brightening Agents from Taiwan: Targeted Dumping—Teh Fong Min International Co., Ltd.,'' dated October 27, 2011.

[8] *See Yieh Phui Enterprise Co.* v. *United States* (Slip Op. 11–107) (August 24, 2011) (*Yieh Phui*).

[9] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (October 25, 2007)).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues in I&D Memo

1. Date of Sale for Long-Term Contracts
2. Constructed Value Profit
3. Constructed Value Selling Expenses
4. Constructed Export Price Profit
5. General and Administrative Expenses
6. Cost Reconciliation

[FR Doc. 2012–7063 Filed 3–22–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that imports of certain steel nails (nails) from the United Arab Emirates are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Continuation of Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On November 3, 2011, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of nails from the United Arab Emirates. *See Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68129 (November 3, 2011) *(Preliminary Determination).*

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the participating respondents, Dubai Wire FZE (Dubai Wire) and Precision Fasteners LLC (Precision). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by both companies.[1]

We received case briefs from Mid Continent Nail Corporation (hereinafter, the petitioner), Dubai Wire, and Precision on January 27, 2012. These parties submitted rebuttal comments on February 1, 2012. No hearing was requested.

Subsequent to the *Preliminary Determination,* the Department revised the SAS program to ensure that it accurately reflected the methodological choices made in that determination. These revisions to the programming, had they been included in the preliminary determination, would not have altered the weighted average dumping margins calculated there. *See* company-specific analysis memoranda, dated concurrently with this notice (company-specific analysis memoranda) (containing the revised preliminary AD margin program, output, and the weighted-average dumping margins).

Period of Investigation

The period of investigation is January 1, 2010, through December 31, 2010.

Scope of Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips

[1] *See* Memorandum to the File entitled ''Verification of the Export-Price Sales Responses of Dubai Wire FZE in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,'' dated January 3, 2012, Memorandum to the File entitled ''Verification of the Export-Price Sales Responses of Precision Fasteners, LLC in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,'' dated January 3, 2012, Memorandum to the File entitled ''Verification of the Cost Response of Dubai Wire FZE in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,'' dated January 17, 2012, and Memorandum to the File entitled ''Verification of the Cost Response of Precision Fasteners, LLC in the Antidumping Duty Investigation of Certain Steel Nails from the United Arab Emirates,'' dated January 17, 2012.

or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- Non-collated (*i.e.,* hand-drive or bulk), two-piece steel nails having plastic or steel washers (''caps'') already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive;
- Non-collated (*i.e.,* hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive;
- Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive;
- Non-collated (*i.e.,* hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive;
- Corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- Thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- Fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- Certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- Fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Changes to the Scope of Investigation

In the *Preliminary Determination* we stated that we are revising the scope of this investigation, as set forth in the *Initiation Notice,*[2] by removing the language referring to the packaging characteristics of certain nails excluded from the scope. *See Preliminary Determination,* 76 FR at 68130. Further, we also stated that we are modifying the scope of the investigation to reflect the ASTM Standard F 1667 (2011 revision) instead of the 2005 revision. *Id.* We invited interested parties to comment on these proposed changes to the scope of this investigation. We received no comments. Accordingly, for the final determination we adopted the revisions to the scope of this investigation discussed in the *Preliminary Determination.*

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Tech Fast International Ltd. (Tech Fast), a respondent selected for individual examination in this investigation, did not act to the best of its ability. Thus, we continue to find that the use of adverse facts available (AFA) is warranted for this company under sections 776(a)(2) and (b) of the Act. *See Preliminary Determination,* 76 FR at 68130–32.

In the *Preliminary Determination,* we selected the lowest rate alleged in the petition, 61.54 percent, as the AFA rate for Tech Fast.[3] *See Preliminary Determination,* 76 FR at 68131. In this final determination, however, we are relying on the average-to-transaction comparison methodology for both Dubai Wire and Precision, pursuant to section 777A(d)(1)(B) of the Act, as explained below. Therefore, we reexamined the appropriate AFA rate for Tech Fast for the final determination and corroborated such rate pursuant to section 776(c) of the Act. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.[4] Consistent with our practice, for the final determination we find that the highest rate in the petition of 184.41 percent is appropriate for Tech Fast. *See Initiation Notice,* 76 FR at 23563.

In the *Preliminary Determination,* we explained our rationale for finding that the rates in the petition have probative value and, thus, are both reliable and relevant to Tech Fast. *See Preliminary Determination,* 76 FR at 68131–32. Further for the final determination, we compared the normal values and net U.S. prices we calculated for Dubai Wire and Precision Fasteners in the final determination to the normal value and net U.S. price underlying the calculation of 184.41 percent rate in the petition. We found that certain normal values we calculated for Dubai Wire and Precision Fasteners in this investigation were higher than or within the range of the normal value in the petition; we found that certain net U.S. prices we calculated for Dubai Wire and Precision Fasteners in this investigation were lower than or within the range of the U.S. price in the petition. *See* company-specific analysis memoranda.

Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate of 184.41 percent ''to the extent practicable'' as provided in section 776(c) of the Act.[5] Therefore, with respect to Tech Fast, for the final determination we have used, as AFA, the margin in the petition of 184.41 percent, as set forth in the notice of initiation. *See Initiation Notice,* 76 FR at 23563.

[2] See *Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation,* 76 FR 23559 (April 27, 2011) (*Initiation Notice*).

[3] *See* the Petition for the Imposition of Antidumping Duties on Certain Steel Nails from the United Arab Emirates, dated March 31, 2011. *See also Initiation Notice,* 76 FR at 23653.

[4] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)).

[5] *See also* 19 CFR 351.308(d). *See, e.g.,* Chapter 6 of the Department's 2009 Antidumping Manual at 17, and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from the United Kingdom, 66 FR 40192 (August 2, 2001) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom, 67 FR 3146 (January 23, 2002).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Targeted Dumping

Pursuant to section 777A(d)(1)(B) of the Act, the Department may employ the average-to-transaction margin-calculation methodology when: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

In the *Preliminary Determination,* based on the methodology adopted in *Nails,*[6] as modified in *Bags*[7] and *Wood Flooring*[8] to correct certain ministerial errors, for both Dubai Wire and Precision we found a pattern of export prices for comparable merchandise that differs significantly among certain customers, regions, and time periods. *See Preliminary Determination,* 76 FR at 68133. We determined preliminarily, however, that these price differences could be taken into account using the standard average-to-average methodology because the alternative average-to-transaction methodology yielded a difference in the margin that was not meaningful relative to the size of the resulting margin. *Id.* Accordingly, in the *Preliminary Determination* we applied the standard average-to-average methodology to all U.S. sales reported by Dubai Wire and Precision. *Id*

For the final determination, for both Dubai Wire and Precision we continue to find a pattern of export prices for comparable merchandise that differs significantly among customers, regions, or by time period. *See* company-specific analysis memoranda. As a result of certain changes to the margin calculations for Dubai Wire and Precision, for the final determination we find that that the standard average-to-average methodology does not take into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is significant relative to the size of the resulting margin. *See* company-specific analysis memoranda. Accordingly, for the final determination we find that the average-to-average methodology masks differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. *See* section 777A(d)(1) of the Act. Therefore, consistent with our practice, for this final determination we have applied the average-to-transaction methodology to all U.S. sales reported by Dubai Wire and Precision in this investigation.[9]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to the margin calculations for Dubai Wire and Precision. For a discussion of these changes, *see* Memorandum to Neal Halper from Gary Urso (Dubai Wire) or from James Balog (Precision Fasteners), entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated concurrently with this notice (Final Determination Cost Calculation Memos) and company-specific analysis memoranda.

Affiliation and Collapsing

As explained in the *Preliminary Determination,* we found that Dubai Wire and its affiliate, Global Fasteners Limited (GFL), a producer of screws, are not a single entity pursuant to 19 CFR 351.401(f) and, thus, should not be collapsed for purposes of calculating a dumping margin for Dubai Wire. *See Preliminary Determination,* 76 FR at 68132. Because no party presented new arguments on the issues and we have no new information that challenges our finding in the *Preliminary Determination,* we continue to find that Dubai Wire and GFL are not a single entity. Further, as explained in the *Preliminary Determination,* we found that, pursuant to section 771(33)(F) of the Act, Precision is not affiliated with Millennium Steel and Wire LLC (MSW). For the final determination, we continue to find that Precision and MSW are not affiliated. *See* Comment 12 of accompanying Issues and Decision Memorandum to this final determination.

Cost of Production

As explained in the *Preliminary Determination,* in accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value for Dubai Wire and Precision because neither company had a viable comparison market. *See Preliminary Determination,* 76 FR at 68134–35. We calculated constructed value in accordance with section 773(e) of the Act. Because Dubai Wire and Precision did not have a viable comparison market, we determined selling expenses and profit under section 773(e)(2)(B) of the Act. In the *Preliminary Determination,* for both Dubai Wire and Precision, we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in the United Arab Emirates, Arab Heavy Industries (AHI). Based on record evidence provided since the *Preliminary Determination* and parties' comments, we find that for the final determination it is more appropriate to use a different source of information to derive the constructed value profit. *See* Comment 6 of accompanying Issues and Decision Memorandum to this final determination. Specifically, we find that the publicly available financial statements for Abu Dhabi National Company for Building Materials best

[6] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (*Nails*).

[7] *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 55183 (October 27, 2009) (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value,* 75 FR 14569 (March 26, 2010)) (*Bags*).

[8] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 4.

[9] *See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value,* 75 FR 14569 (March 26, 2010) and accompanying Issues and Decision Memorandum at Comment 1. *See* Comment 4 of accompanying Issues and Decision Memorandum to this final determination.

meet the requirements of section 773(e)(2)(B) of the Act because it is predominately a trading company in building materials, while AHI is predominately a provider of services and products to a customer base of marine, offshore, and engineering industries which is substantially divergent from that of Precision and Dubai Wire. Further, because this source of information did not provide enough detail to calculate selling expenses for Dubai Wire and Precision Fasteners, we used the companies' respective company-wide selling-expense rates. *See* company-specific analysis memoranda. With respect to Precision, *see also* Comment 7 of accompanying Issues and Decision Memorandum to this final determination. We find that this approach satisfies sufficiently the criteria of section 773(e) because the selling expenses were derived for subject merchandise as well as for products in the same general category as subject merchandise.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of nails from the United Arab Emirates which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rates for Dubai Wire, Precision, and Tech Fast will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.55 percent, as discussed in the ''All-Others Rate'' section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Dubai Wire FZE	6.29
Precision Fasteners LLC	2.80
Tech Fast International Ltd	184.41

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Dubai Wire and Precision Fasteners are the only respondents in this investigation for which we calculated a company-specific rate that is not zero or *de minimis* or determined entirely under section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted-average calculation risks disclosure of business proprietary information of Dubai Wire and Precision Fasteners, the ''all-others'' rate is a simple-average of these two values, which is 4.55 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value,* 75 FR 60723, 60724 (October 1, 2010).

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues and Decision Memorandum

1. Targeting Dumping Allegations
2. Methodologies Underlying Targeted Dumping Test
3. *De Minimis* Standard in the Targeted Dumping Test
4. Application of the Average-to-Transaction Comparison Methodology
5. Zeroing under the Average-to-Transaction Comparison Methodology in Investigations
6. Constructed Value Profit
7. Constructed Value Selling Expenses
8. Affiliated Loans
9. Cost Differences Unrelated to Differences in Physical Characteristics
10. General and Administrative Expenses
11. Quarterly Cost Methodology
12. Affiliation
13. Adverse Facts Available

[FR Doc. 2012–7067 Filed 3–22–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB086

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

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

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting on May 1–2, 2012. The Committee will meet with its Technical Advisors to discuss matters relating to ICCAT, including the 2011 Commission meeting results; research and management activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required report on any identification of countries that are diminishing the effectiveness of ICCAT; the results of meetings of the

Committee's Species Working Groups; and other matters relating to the international management of ICCAT species.

DATES: The open sessions of the Committee meeting will be held on May 1, 2012, 8:30 a.m. to 3 p.m., and May 2, 2012, 9 a.m. to 1:15 p.m. Closed sessions will be held on May 1, 2012, 3:15 p.m. to 6 p.m., and on May 2, 2012, 8 a.m. to 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910. The phone number is (301) 589–5200.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley at (301) 427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on the 2011 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required consultation on any identification of countries that are diminishing the effectiveness of ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

The Committee will meet in its Species Working Groups for part of the afternoon of May 1, 2012, and for one hour on the morning of May 2, 2012. These sessions are not open to the public, but the results of the species working group discussions will be reported to the full Advisory Committee during the Committee's open session on May 2, 2012.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 at least 5 days prior to the meeting date.

Dated: March 20, 2012.

Rebecca J. Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2012–7064 Filed 3–22–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB030

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy's Training Activities at the Gulf of Mexico Range Complex

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

ACTION: Notice; issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a two-year Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to its training activities at the Gulf of Mexico (GOMEX) Range Complex.

DATES: Effective from March 18, 2012, through March 17, 2014.

ADDRESSES: Copies of the Navy's November 2, 2011, LOA application, and the LOA are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the GOMEX Range Complex were published on February 17, 2011 (76 FR 9250), and remain in effect through February 17, 2016. They are codified at 50 CFR part 218 subpart D. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's training activities. For detailed information on these actions, please refer to the February 17, 2011, **Federal Register** notice and 50 CFR part 218 subpart D. On February 1, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid.

Summary of LOA Request

NMFS received an application from the U.S. Navy for an LOA covering the Navy's training activities at the GOMEX Range Complex in the Gulf of Mexico under the regulations issued on February 17, 2011 (76 FR 9250). The application requested authorization, for a period of two years, to take, by harassment, marine mammals incidental to proposed training activities that involve underwater explosive detonation.

Summary of Activity Under the 2011 LOA

Between March 2011 and January 2012, there were no training events conducted in the GOMEX Range Complex.

Planned Activities for 2012 Through 2014

In 2012 through March 2014, the Navy expects to conduct the same type and amount of training activities identified in the final rules and 2011 LOA. No modification is proposed by the Navy for its planned 2012—2014 activities under the 2011 rule.

Estimated Take for 2012–2014

The estimated takes for the Navy's proposed training activities are the same as those authorized in 2011. No change

has been made in the estimated takes from the 2011 LOA.

Summary of Monitoring, Reporting, and Other Requirements Under the 2009 LOA

In the 2011 LOA and regulations, the Navy is required to submit annual Range Complex monitoring and exercise reports by March 1, covering through January 1 of the same year. However, NMFS realized that the LOA for the GOMEX Range Complex training activities expires on March 17. To allow adequate time to review these reports for the issuance of future LOA renewal and rulemakings, the due date of these reports is changed to November 1, covering the period through August 1 of the pervious year.

Annual Range Complex Exercise Report

The Navy submitted their 2011 annual Range Complex training activities reports covering the period from the dates when Range Complex LOAs became effective through January 2012, and the reports are posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. In the case of GOMEX Range Complex, the Navy reported that there were no training events during the reporting period between March 2011 and January 2012.

Monitoring and Annual Monitoring Reports

The Navy submitted the Range Complex marine species monitoring reports within the required timeframes and they are posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Since there were no training events conducted between March 2011 and January 2012 at the GOMEX Range Complex, no monitoring opportunities were available during that period.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. No changes were proposed for the 2012 monitoring plan for the Navy's GOMEX Range Complex training activities.

2011 Monitoring Meeting

The regulations that established the framework for authorizing the taking of marine mammals incidental to Navy RDT&E activities required the Navy, with guidance and support from NMFS, to convene a Monitoring Workshop in 2011 (50 CFR 218.184(i)). The Marine Mammal Monitoring Workshop, which included scientists, representatives from non-governmental organization, and Marine Mammal Commission staff, took place in June 2011. Pursuant to the regulations, this workshop presented a consolidated overview of monitoring activities conducted in 2010, as well as the outcomes of selected monitoring-related research. In 2010, the Navy convened a Scientific Advisory Group (SAG), comprised of experts in the fields of marine mammals and underwater acoustics, to review the Navy's current monitoring plans and make recommendations. The results of the SAG's review were also presented at the meeting. Participants engaged in open discussion of the lessons learned, and discussed how to improve the Navy's monitoring plan moving forward. If changes to monitoring approaches are identified during future workshops that can be implemented during the annual LOA renewal process and subsequent 5-year regulations, the Navy and NMFS will modify the Navy-wide monitoring plan and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and study areas. For Range Complexes or study areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the **Federal Register** and solicit public input. After addressing public comments and making changes as appropriate, NMFS will issue new training area LOAs that reflect the new Navy-wide monitoring plan.

Authorization

Since there are no changes in the Navy's proposed training activities at the GOMEX Range Complex, NMFS' determination that the Navy's GOMEX Range Complex training activities will have no more than a negligible impact on the affected species or stocks of marine mammals in the action area, as described in the original regulations, is still valid. There is no subsistence use of marine mammals that could potentially be impacted by the Navy's training activities at GOMEX Range Complex. Further, the level of taking authorized in 2012 through March 2014 for the Navy's GOMEX Range Complex training activities is consistent with our previous findings made for the total taking allowed under the GOMEX Range Complex regulations. Accordingly, NMFS has issued a two-year LOA for Navy's training activities conducted at the GOMEX Range Complex from March 18, 2012, through March 17, 2014.

Dated: March 4, 2012.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7041 Filed 3–22–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 4/23/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 1/13/2012 (77 FR 2048), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the

Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center, National Maritime Intelligence Center/ Office of Naval Intelligence, 4251 Suitland Road, Suitland, MD.

NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC.

Contracting Activity: Dept. of the Navy, Office Of Naval Intelligence, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–7006 Filed 3–22–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: 4/23/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Parts Kit, Soft Top Troop Area Enclosure, Humvee, Tan

NSN: 2540–01–329–8073.

NPA: Montgomery County Chapter, NYSARC, Inc., Amsterdam, NY.

Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.

Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Land and Maritime, Columbus, OH.

Ice Melt/De-Icer

NSN: 6850–01–598–1946—10 lbs.

NSN: 6850–01–598–1926—20 lbs.

NSN: 6850–01–598–1933—40 lbs.

NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.

Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.

Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Aviation, Richmond, VA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Paper, Mimeograph and Duplicating

NSN: 7530–00–234–7169.

NSN: 7530–00–240–4768.

NSN: 7530–00–253–0986.

NSN: 7530–00–285–3070.

NSN: 7530–00–286–6178.

NSN: 7530–01–037–5555.

NSN: 7530–01–037–5556.

NSN: 7530–01–072–2534.

NPA: Louisiana Association for the Blind, Shreveport, LA.

Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations

[FR Doc. 2012–7001 Filed 3–22–12; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 23, 2012 unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
F044 AF PC A

SYSTEM NAME:

Individual Weight Management File (June 11, 1997, 62 FR 31793).

REASON:

Documents are no longer required to be maintained by Air Force Personnel Center (AFPC), Medical Standards. Records are being maintained in accordance with the System of Records Notice, F044 AF SG N, Physical Fitness File (June 11, 1997, 62 FR 31793) and follow its retention schedule.

[FR Doc. 2012–6972 Filed 3–22–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160), the Department of the Army announces the following committee meeting:

Name of Committee: U.S. Army Command & General Staff College Subcommittee.

Date: April 23–25, 2012.

Place: U.S. Army Command and General Staff College, Ft. Leavenworth, KS, Lewis & Clark Center, 66027.

Time: 8:30 a.m. to 4 p.m. (April 23, 2012). 8:30 a.m. to 4 p.m. (April 24, 2012). 8:30 a.m. to 12 p.m. (April 25, 2012).

Proposed Agenda: Starting point of the meeting will be an overview of the CGSC, as well as its constituent schools, the Command and General Staff School and the School of Advanced Military Studies. Subcommittee members will gather information from students, staff and faculty on 23 and 24 April. General deliberations leading to provisional findings for referral to the Army Education Advisory Committee will follow on 25 April beginning at about 0900.

FOR FURTHER INFORMATION CONTACT: For information, please contact Dr. Robert Baumann at *robert.f.baumann@us.army.mil.* Written submissions are to be submitted to the following address: U.S. Army Command and General Staff College Subcommittee, ATTN: Alternate Designated Federal Officer (Baumann), Lewis & Clark Center, U.S. Army Command and General Staff College, Ft. Leavenworth, KS 66027.

SUPPLEMENTARY INFORMATION: Meeting of the Advisory subcommittee is open to the public. Attendance will be limited to those persons who have notified the Advisory Subcommittee Management Office at least 10 calendar days prior to the meeting of their intention to attend.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak, however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Alternate Designated Federal Officer (ADFO) at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until its next meeting.

The ADFO will review all timely submissions with the Chairperson, and ensure they are provided to the members of the respective subcommittee before the meeting. After reviewing written comments, the Chairperson and the ADFO may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting.

The ADFO, in consultation with the Chairperson, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–7076 Filed 3–22–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Revised Notice of Intent To Prepare a Draft Environmental Impact Statement for the Bogue Banks Coastal Storm Damage Reduction Feasibility Study, in Carteret County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District (Corps) intends to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the impacts of the proposed alternatives to reduce coastal storm damages from beach erosion on Bogue Banks North Carolina. The Bogue Banks study area is located on the coast of North Carolina, about 80 miles north of Wilmington, North Carolina. This area

is at risk from hurricanes and winter storms, which regularly erode the shoreline, causing damage to structures and environmental resources. The proposed Bogue Banks Coastal Storm Damage Reduction (CSDR) Feasibility Study will evaluate several alternatives. These alternatives may include restoration of berms and dunes, with stabilizing vegetation on dunes, removal and/or relocation of structures, and the no-action alternative. The potential project area may be up to 24 miles in length, from Beaufort to Bogue Inlets. The potential benefits from the proposed project include storm damage reduction to structures and their related infrastructure (i.e., roads, utility lines, etc.), improved aesthetic and recreation opportunities, and improved habitat conditions for endangered species.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, and will address the relationship of the proposed action to other applicable Federal and State Laws and Executive Orders.

DATES: The earliest the DEIS will be available for public review would be October 2013.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Eric Gasch, Environmental Resources Section; U.S. Army Engineer District, Wilmington; 69 Darlington Avenue, Wilmington, North Carolina 28403; telephone: (910) 251–4553; email: *eric.k.gasch@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. Previous Notice of Intent (NOI) publication. This notice is a revision of a previously published notice in the **Federal Register** on February 8, 2002, (67 FR 6015) to prepare a DEIS and is prepared in response to the significant amount of time which has passed since that NOI.

2. Authority. Studies are being conducted pursuant to a congressional resolution concerning Bogue Banks. Primary study emphasis is directed toward CSDR measures for the beaches of Bogue Banks. The authorizing resolution states:

Resolution Adopted July 23, 1998 by the United States House of Representatives:

Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that the Secretary of the Army is requested to review the report of the Chief of Engineers dated November 27, 1984, on Bogue Banks and Bogue Inlet, North Carolina, and other pertinent reports, to determine whether any modifications of the recommendations contained therein are advisable at the present time in the interest of shore protection and related purposes for Bogue Banks, North Carolina.

3. Significant Issues. Significant environmental resources to be addressed in the DEIS include, but are not limited to: (1) Endangered and threatened species; (2) Marine and estuarine resources; (3) Upland beach and dune resources; (4) Fish and wildlife and their habitats; (5) Essential Fish Habitat (EFH) and Cape Fear Sandy Shoals; (6) Water and air quality; (7) Socioeconomic resources; (8) Cultural resources; and (9) Hazardous Toxic Radioactive Waste.

4. Scoping. All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. A scoping letter requesting input to the study was sent to all known interested parties on December 29, 1999. Considering the duration of time that had past since the initial scoping effort, a second scoping letter will be prepared.

Based on project comments received to date, a scoping meeting will not be needed. However, if significant comments are received in response to this updated NOI and Scoping letter, a scoping meeting will be scheduled. All comments received as a result of this NOI and the scoping letter will be considered in the preparation of the DEIS.

5. Alternatives. The alternatives for this project will include the no action, and others currently being evaluated.

6. Cooperating Agencies. The Corps is the lead agency for this project. Cooperating agency status has been initiated with the Bureau of Ocean Energy Management since the offshore limits of the proposed borrow area extend into the Outer Continental Shelf.

Steven A. Baker,

Colonel, U.S. Army District Commander.

[FR Doc. 2012–7039 Filed 3–22–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Mississippi River Hydrodynamic and Delta Management Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare an environmental impact statement (EIS) for the Louisiana Coastal Area (LCA)—Louisiana, Mississippi River Hydrodynamic and Delta Management restoration study. This study will identify and evaluate a combination of large-scale management and restoration features to address the long-term sustainability of the lower Mississippi River Deltaic Plain. Hydrodynamic models and other forecast methods will be used to determine existing water and sediment resources in the Mississippi River available to restore and sustain delta growth in the Mississippi River Delta and assess benefits and impacts of large-scale strategies that balance the interests of ecosystem restoration, flood risk reduction, and navigation. This EIS will be tiered off of the November 2004, programmatic EIS for the Louisiana Coastal Area (LCA), Louisiana, Ecosystem Restoration Study (LCA Study). The record of decision for the programmatic EIS was signed on November 18, 2005. This notice announces the USACE's intent to host six (6) public scoping meetings.

DATES: Comments on the scope of the EIS will be accepted until close of business on May 4, 2012. Please refer to the ''Scoping'' section below for instructions on how to submit public comments, the dates of the upcoming public scoping meetings and other meeting information.

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft EIS and scoping comments should be addressed to Dr. William P. Klein, Jr., CEMVN–PDN–CEP, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2540; fax: (504) 862–1583; or by email: *william.p.klein.jr@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. Authority. The Mississippi River Hydrodynamic and Delta Management Study, identified as a large-scale, long-term restoration feature recommended for study in the 2004 LCA Study, is authorized to be studied under Section 7003 of the Water Resource Development Act (WRDA) 2007 (Pub. L. 110–114), as well as resolutions of the U.S. House of Representatives and Senate Committees on Public Works, dated April 19, 1967 and October 19, 1967, respectively.

2. Proposed Action. The Mississippi River Hydrodynamic and Delta Management Study is the first large-scale, long-term restoration assessment investigated under the LCA Program. Ecosystem restoration features that increase the deposition of Mississippi

River sediment in shallow coastal areas and restore delta growth and wetland sustainability will be identified and evaluated. A series of hydrodynamic models will be used to evaluate Mississippi River sediment and water resources including: Hydraulics and the relationship of flow conditions to sediment transport, salinity intrusion, the flux of key nutrients, deposition and erosion, and the net results of these processes in river channel and distributary morphology over more than 300 miles of the river (Old River to the Gulf of Mexico). These models will be used for this study and future LCA Program studies and projects. Large-scale river diversions and outfall management measures that optimize the river sediment and freshwater resources to provide long-term restoration and sustainability of the Delta Plain, including the sediment-starved barrier shorelines, will be considered. Possible navigation alternative scenarios could include consideration of new navigation channels to the east or west of the current Mississippi River alignment. Navigation channel analysis would be limited to preliminary screening as any navigation channel re-alignment scenarios would require, at a minimum, re-scoping the present study.

The Mississippi River Hydrodynamic and Delta Management Study will evaluate potential benefits and impacts to both the natural and human environments. This study will provide methods for quantifying effects and developing large-scale management strategies and projects that balance the interests of ecosystem restoration, flood control, and navigation purposes for Louisiana and the Nation.

3. Public Involvement. Public involvement, an essential part of the National Environmental Policy Act (NEPA) process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the EIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially acceptable EIS. Public involvement will include, but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the EIS and supporting information readily available in conveniently located places, such as libraries and on the world wide web.

4. Scoping. Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the EIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient EIS preparation process; (c) define the issues and alternatives that will be examined in detail in the EIS; and (d) save time in the overall process by helping to ensure that the draft EIS adequately addresses relevant issues. The USACE will host six (6) NEPA public scoping meetings at the following locations on the dates indicated between 6 p.m. and 8 p.m.:

Tuesday, April 10, 2012: Louisiana Department of Natural Resources, LaBelle Room-1st Floor, 617 North 3rd Street Baton Rouge, LA.

Thursday, April 12, 2012: Port of New Orleans, Auditorium 1st Floor, 1350 Port Of New Orleans Place New Orleans, LA.

Tuesday, April 17, 2012: Larose Civic Center, 307 East 5th Street, Cuttoff, LA.

Thursday, April 19, 2012: Boothville Elementary, #1 Oiler Drive Boothville, LA.

Tuesday, April 24, 2012: Waveland Civic Center, 335 Coleman Avenue Waveland, MS.

Thursday, April 26, 2012: St. Bernard Parish Council Chambers, 8201 W. Judge Perez Drive Chalmette, LA.

A Scoping Meeting Notice announcing the specific locations, driving directions, dates and times for scoping meetings is anticipated to be mailed to interested parties in March 2012.

5. Coordination. The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Rivers.

6. Availability of Draft EIS. The earliest that the draft EIS will be available for public review would be in 2016. The draft EIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: March 13, 2012.

Edward R. Fleming,

Colonel, U.S. Army, District Commander.

[FR Doc. 2012–7038 Filed 3–22–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Overseas Environmental Impact Statement for Military Readiness Activities in the Northwest Training and Testing Study Area and To Announce Public Scoping Meetings; Correction

AGENCY: Department of Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (77 FR 11497) on February 27, 2012, concerning public scoping meetings to support the development of an Environmental Impact Statement/ Overseas Environmental Impact Statement for the Northwest Training and Testing Study Area. The document contained an incorrect comment period closing date.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kler, Naval Facilities Engineering Command, Northwest, 1101 Tautog Circle, Suite 203, Silverdale,

Washington 98315–1101, Attention: NWTT EIS/OEIS Project Manager.

Correction: In the **Federal Register** (77 FR 11497) of February 27, 2012, on page 11498, in the third column, last paragraph, correct the comment period date to read:

Written comments must be postmarked no later than April 27, 2012, and should be mailed to: Ms. Kimberly Kler, Naval Facilities Engineering Command, Northwest, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101, Attention: NWTT EIS/OEIS Project Manager.

Dated: March 16, 2012.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–7018 Filed 3–22–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Application for New Awards; Training for Realtime Writers Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Training for Realtime Writers Program

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116K.

DATES:

Applications Available: March 23, 2012.

Deadline for Transmittal of Applications: May 7, 2012.

Deadline for Intergovernmental Review: July 6, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The objective of this program is to provide grants to institutions of higher education (IHEs) that meet certain qualifications, to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 713 of the Communications Act of 1934 (47 U.S.C. 613) and the regulations prescribed thereunder.

Priorities: This notice contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 872(a)(3) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1161s(a)(3). The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Absolute Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Applicants must: (1) Demonstrate they possess the most substantial capability to increase their capacity to train realtime writers; (2) demonstrate the most promising collaboration with educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or (3) propose the most promising and innovative approaches for initiating or expanding training or job placement assistance efforts with respect to realtime writers.

An eligible entity receiving a grant must use the grant funds for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including: (1) Recruitment; (2) the provision of scholarships (subject to the requirements in section 872(c)(2) of the HEA); (3) distance learning; (4) further developing and implementing both English and Spanish curricula to more effectively train individuals in realtime writing skills, and education in the knowledge necessary for the delivery of high quality closed captioning services; (5) mentoring students to ensure successful completion of the realtime training and providing assistance in job placement; (6) encouraging individuals with disabilities to pursue a career in realtime writing; and (7) the employment and payment of personnel for the purposes described.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities.

There are three competitive preference priorities: Competitive Preference Priority 1—Improving Productivity; Competitive Preference Priority 2—Enabling More Data-Based Decision-Making; and Competitive Preference Priority 3—Technology.

Under 34 CFR 75.105(c)(2)(i), we award one additional point for each competitive priority that an application meets. The maximum competitive preference points an application can receive under this competition is three.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priority or priorities they are addressing.

These priorities are:

Competitive Preference Priority 1—Improving Productivity (1 Additional Point)

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (1 Additional Point)

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success; and

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Competitive Preference Priority 3—Technology (1 Additional Point)

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Definitions

These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal**

Register on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and they apply to the competitive preference priorities in this notice.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Student Achievement Means

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests;

student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Note: Projects responding to competitive preference priority 3 must incorporate ways to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials. The Department recognizes that some of the examples in the definition of student achievement may not be relevant to the TRTW program. Accordingly, applicants who are writing to this priority should address paragraph (a)(2) of the definition of ''student achievement,'' which tells applicants to focus on other measures of student learning, and should address this competitive preference priority in a way that improves student achievement in a relevant higher education context.

Program Authority: 20 U.S.C. 1161s.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,127,684.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $281,921 for the entire performance period.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for the entire grant period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that offers a court reporting program that: (1) Has a curriculum capable of training realtime writers qualified to provide captioning services; (2) is accredited by an accrediting agency or association recognized by the Secretary; and (3) is participating in student aid programs under Title IV of the HEA.

2. (a) *Cost Sharing or Matching:* This program does not require cost sharing or matching.

(b) *Supplement-Not-Supplant:* This program includes a supplement-not-supplant requirement. Under section 872(c)(4) of the HEA, grant amounts awarded under this program must supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116K.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Any application addressing the competitive preference priorities must address them in the abstract and the narrative. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page. You must limit the application narrative to no more than 15 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, endnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424) and the Department of Education Supplemental Information for the SF 424 Form; the one-page Abstract; Budget Information—Non-Construction Programs (ED 524); or Part IV, the Assurances and Certifications. The page

limit also does not apply to a Table of Contents, if you include one. However, the page limit does apply to all of the project narrative section in Part III.

If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 23, 2012.

Deadline for Transmittal of Applications: May 7, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 6, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Under section 872(c)(3) of the HEA, a grantee under this program may not use more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp*.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Training for Realtime Writers Program, CFDA number 84.116K, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training for Realtime Writers Program at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116K).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your

application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frederick Winter, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street NW., Room 6142, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116K), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark. (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116K), 550 12th

Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Training for Realtime Writers Program: The number and percentage of participants who have completed the program who are employed as realtime writers.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Frederick Winter, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street, NW., Room 6142, Washington, DC 20006–8544. Telephone: (202) 502–7632 or by email: *frederick.winter@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 20, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–7068 Filed 3–22–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program (SIP)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Strengthening Institutions Program

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031A.

Dates:

Applications Available: March 23, 2012.

Deadline for Transmittal of Applications: April 23, 2012.

Deadline for Intergovernmental Review: June 21, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SIP provides grants to eligible institutions of higher education (IHEs) to help them become self sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Priorities: This notice includes one competitive preference priority and three invitational priorities. The competitive preference priority is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points to an application, depending on how well the application meets this priority.

This priority is:

Supporting Programs, Practices, or Strategies for Which There Is Strong or Moderate Evidence of Effectiveness

Projects that are supported by strong or moderate evidence. A project that is supported by strong evidence (as defined in this notice) will receive more points than a project that is supported by moderate evidence (as defined in this notice).

Note: In scoring this priority, applicants determined to have strong evidence will receive the full five points. Applicants determined to have moderate evidence will receive 2.5 points. The Department will screen applicants' response to this competitive preference priority in accordance with the requirements in this notice and determine which applications have met the evidence standards in the priority.

Invitational Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities.

These priorities are:

Invitational Priority 1—Increasing Postsecondary Success

Projects that are designed to address the following priority area:

Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Invitational Priority 2—Technology

Projects that are designed to improve student achievement or faculty effectiveness through the use of high-quality digital tools or materials, which may include preparing faculty to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Invitational Priority 3—Improving Productivity

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, alternative staffing models, competency-based learning, use of open educational resources (as defined in this notice), or other strategies.

Definitions: The following definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to the priorities in this notice:

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to:

(1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups);

(2) Demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background;

(3) The time period in which the two groups are studied (e.g., the two groups are children entering kindergarten in the same year as opposed to sequential years); and

(4) Methods used to collect outcome data (e.g., the same test of reading skills administered in the same way to both groups).

Note: The examples cited in this definition are indications of the types of comparisons applicants could make when designing a carefully matched comparison group study. Applicants might want to consider comparisons that are proper in the higher education context—such as comparing the same entering cohort of students.

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Note: The types of random assignment mentioned above are provided as examples. Applicants might want to consider random assignment that is relevant in the higher education context.

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level, or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or

certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.[1]

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence:

(1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability;

(2) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or

(3) Correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental study (as defined in this notice) and can support causal conclusions (i.e., minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study (as defined in this notice) design that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Note: The types of regression discontinuity study designs are provided as examples to help applicants. Applicants might want to consider regression discontinuity study designs that are relevant in the higher education context.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence:

(1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or

(2) One large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Program Authority: 20 U.S.C. 1057–1059d (Title III, Part A, of the Higher Education Act of 1965 (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA) Pub. L. 110–315. The HEOA made a number of technical and substantive revisions to SIP. Please note that the regulations for the SIP in 34 CFR part 607 have not been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 607. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,304,964.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Individual Development Grants:

Estimated Range of Awards: $350,500–$403,500 per year.

Estimated Average Size of Awards: $377,000 per year.

Estimated Number of Awards: 13.

[1] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time; a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $300,000–$500,000 per year.

Estimated Average Size of Awards: $400,000 per year.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by Title III, Part A, of the HEA. To qualify as an eligible institution under any Title III, Part A program, an institution must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an ''eligible institution'' by demonstrating that it: (A) Has an enrollment of needy students as described in 34 CFR 607.3; and (B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2012 was published in the **Federal Register** on December 15, 2011 (76 FR 77982), and the deadline for submission of the designation of eligibility application was February 10, 2012. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

Relationship Between the Title III, Part A Programs and the Hispanic-Serving Institutions (HSI) Programs.

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized under Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program. The Title III, Part A programs include the SIP, as well as the Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Asian American and Native American Pacific Islander-Serving Institutions, and Native American-Serving Nontribal Institutions programs. Furthermore, a current HSI program grantee may not give up its HSI grant to receive a grant under SIP or any Title III, Part A program as described in 34 CFR 607.2(g)(1).

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (i.e., is not a current grantee under the HSI program) may apply for a FY 2012 grant under all Title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant *or* one cooperative arrangement development grant in a fiscal year. We will not award a second cooperative arrangement development grant to an otherwise eligible IHE for the same award year as the IHE's existing cooperative arrangement development grant award as described in 34 CFR 607.9(b)(1).

Note 4: The Department will make five-year awards for individual development grants and five-year awards for cooperative arrangement development grants in rank order from the funding slate according to the average score received from a panel of three readers plus any competitive preference points awarded based upon determination of the evidence.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059c(c)(3)(B)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: *http://Grants.gov*. If you do not have access to the Internet, please contact LaTonya Brown or Robyn Wood, U.S. Department of Education, 1990 K Street NW., room 6033, Washington, DC 20006–8513. You may contact the individuals at the following email addresses and telephone numbers:

LaTonya.Brown@ed.gov; (202) 502–7619.

Robyn.Wood@ed.gov; (202) 502–7437.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), toll free, at 1–800–576–7734.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contacts listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference priority that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. If you are addressing the competitive preference priority you must limit the application narrative (Part III) to no more than 55 pages for the Individual Development Grant application and no more than 75 pages for the Cooperative Arrangement Development Grant application. Please include a separate heading when responding to the competitive preference priority. If you are not addressing the competitive preference priority, you must limit your application narrative to no more than 50 pages for the Individual Development Grant and no more than 70 pages for the Cooperative Arrangement Development Grant application

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under ''Other Attachments Form,'' of the application. An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available or include copies of evidence in Appendix D of the application. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information to support the application.

For the purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Text in charts,

tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

• Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424-cover sheet); the Supplemental Information for SF 424 Form required by the Department of Education; Part II, the budget section, Budget Information-Non-Construction Programs (ED 524), including the narrative budget justification; Part IV, the assurances and certifications; or the one-page program abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria and the competitive preference priority. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for the purposed of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The narrative response to the budget selection criteria is not the same as the activity detail budget form and supporting narrative. The supporting narrative for the activity detail budget form lists the requested budget line items line by line.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 23, 2012.

Deadline for Transmittal of Applications: April 23, 2012.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 21, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* (a) General. We reference the regulations outlining funding restrictions in the Applicable Regulations section of this notice.

(b) Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A, HEA programs, must comply with Executive Order 13202, signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete. In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details of these steps are outlined on the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under the Strengthening Institutions Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Strengthening Institutions Program (CFDA number 84.031A) must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before

the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for this competition at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.031, not 84.031A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: LaTonya Brown or Robyn Wood, U.S. Department of Education, 1990 K Street NW., room 6033, Washington, DC 20006–8513. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail

or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22, (a) through (g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses. The complete language of the selection criteria is in the application package for this competition.

(a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).

(b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* (a) Awards will be made in rank order according to the average score received from a panel of three readers.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per full time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2009–2010 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE enrolled student; and (b) cooperative arrangement development grants to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)–(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant (34 CFR 607.24); or, is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Institutions Program:

a. The percentage change, over the 5-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at 4-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at 2-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year SIP institutions graduating within 6 years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 2-year SIP institutions graduating within 3 years of enrollment.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: LaTonya Brown or Robyn Wood, U.S. Department of Education, 1990 K Street NW., room 6033, Washington, DC 20006–8513. You may contact these individuals at the following email addresses and telephone numbers: *Latonya.Brown@ed.gov*; (202) 502–7619. *Robyn.Wood@ed.gov*; (202) 502–7437.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under For Further Information Contact in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 20, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–7070 Filed 3–22–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From October 1, 2011, through December 31, 2011

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) to individuals during the previous quarter. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *http://www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other Departmental documents described in this list in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7468.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2011, through December 31, 2011. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, and it may also include letters and other

documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter, and it provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Elilgibiliy

Topic Addressed: Children in Private Schools

○ Letter dated December 6, 2011, to Susan Luger Associates, regarding transportation for children with disabilities who are placed in private schools by their parents.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

○ Letter dated December 19, 2011, to New Mexico Director of Special Education Denise Koscielniak, regarding public agency criteria for determining whether a child should continue to receive speech-language pathology services.

Section 618—Program Information

Topic Addressed: Graduation

○ Letter dated December 2, 2011, to Northwest Indiana Special Education Cooperative Director Patricia Pierce, regarding reporting data on high school graduation rates for students with disabilities.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 19, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–7069 Filed 3–22–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 03/12/2012 Through 03/16/2012 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120069, Final Supplement, USFS, ID, Lakeview-Reeder Fuels Reduction Project, Proposed Fuels Reduction and Road Treatment Activities, Updated and New Information, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, ID, Review Period Ends: 04/23/2012, Contact: A.J. Helgenberg 208–265–6643.

EIS No. 20120070, Draft EIS, FHWA, ME, I–395/Route 9 Transportation System, To Improve Transportation System Linkage, Safety, and Mobility, USACE 404 Permit Application, Penobscot and Hancock Counties, ME, Comment Period Ends: 05/15/2012, Contact: Mark Hasselmann 207–622–8350.

EIS No. 20120071, Final EIS, NPS, MD, Hampton National Historic Site, General Management Plan, Implementation, Baltimore County, MD, Review Period Ends: 04/23/2012, Contact: Tina Orcutt 410–962–4290.

EIS No. 20120072, Final EIS, FTA, CA, Westside Subway Extension Transit Corridor Project, Extension of the Existing Metro Purple Line and Metro Red Line Heavy Rail Subway, Los Angeles County Metropolitan Transportation Authority, Los Angeles County, CA, Review Period Ends: 04/23/2012, Contact: Ray Tellis 213–202–3956.

EIS No. 20120073, Draft EIS, USACE, CA, Isabella Lake Dam Safety Modification Project, To Remediate Seismic, Seepage, and Hydrologic Deficiencies in the Main Dam, Spillway and Auxiliary Dam, Kern County, CA, Comment Period Ends: 05/07/2012, Contact: Tyler M. Stalker 916–557–5107.

EIS No. 20120074, Draft EIS, BLM, CA, Calnev Pipeline Expansion Project, Construction, Operation, and Maintenance of a 233-mile Pipeline from North Colton Terminal to Bracken Junction, USACE Section 404 Permit, San Bernardino County, CA, Comment Period Ends: 06/21/2012, Contact: Rich Rotte 760–252–6026.

EIS No. 20120075, Draft EIS, FHWA, IA, Eastern Hills Drive and Connecting Roadways Construction Project, To Improve Transportation Network East of Council Bluff, Funding, USACE Section 404 Permit, Pottawattamie County, IA, Comment Period Ends: 05/07/2012, Contact: Lubin Quinones 515–233–7300.

EIS No. 20120076, Draft EIS, USFS, WI, Park Falls Hardwoods Vegetation and Transportation Management Activities, Implementation, Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District, Price County, WI, Comment Period Ends: 05/07/2012, Contact: Jane Darnell 715–748–4875 ext. 38.

EIS No. 20120077, Final EIS, FERC, 00, New Jersey-New York Expansion Project, Propose to Modify and Expand Existing Natural Gas Transmission Pipeline Systems in New Jersey, New York, and Connecticut, Review Period Ends: 04/23/2012, Contact: Roberta Coulter 202–502–8584.

EIS No. 20120078, Second Draft Supplement, FHWA, TX, Trinity Parkway Project, Construction of a Six-Lane Controlled Access Toll Facility from IH–35 E/TX–183 to US–175/TX–310, Additional Information on the Compatibility with Levee Remediation Plans for the Dallas Floodway and New Information on Historic Resources, US Army COE Section 10 and 404 Permits, Dallas County, TX, Comment Period Ends: 05/07/2012, Contact: Salvador Deocampo 512–536–5950.

EIS No. 20120079, Final Supplement, USFS, MI, Huron-Manistee National Forests, Land and Resource Management Plan, Supplements the 2006 FEIS Analysis and to Correct the Deficiencies that the Meister Panel Identified, Implementation, Several Counties, MI, Review Period Ends: 04/23/2012, Contact: Kenneth Arbogast 231–775–2421.

Dated: March 20, 2012.

Aimee Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–7031 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–9339–2]

Environmental Protection Agency, Department of Health and Human Services and Department of Agriculture; Memorandum of Understanding Regarding Genetically Engineered Plants; Clarification and Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; clarification and correction.

SUMMARY: EPA issued a notice in the **Federal Register** of February 1, 2012, concerning a Memorandum of Understanding between the Environmental Protection Agency, Department of Health and Human Services and the Department of Agriculture regarding genetically engineered plants. This document is being issued to clarify and correct the notice announcing the Memorandum of Understanding.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–8338, *steadman.mario@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What does this correction do?

In the **SUMMARY** of the notice published on February 1, 2012, (77 FR 5012) (FRL–9328–7), announcing the Memorandum of Understanding, it was stated that the Department of Health and Human Services' Centers for Disease Control and Prevention and the Food and Drug Administration would perform work for EPA's Office of Pesticide Programs. However, under the Memorandum of Understanding neither the Centers for Disease Control and Prevention nor the Food and Drug Administration will perform any work for OPP; therefore EPA is correcting the **SUMMARY** to the notice announcing the Memorandum of Understanding.

FR Doc. 2012–2198, published in the **Federal Register** of February 1, 2012, at page 5012 is corrected as follows:

On page 5012, in the third column, in EPA document ''EPA–HQ–OPP–2011–0038,'' the **SUMMARY** for the Memorandum of Understanding is corrected to read: **SUMMARY:** This notice announces that pesticide-related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by submitters in accordance with 40 CFR 2.309(c) and 2.308(h)(2) will be shared with the Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA). The Memorandum of Understanding (MOU) will support and encourage cooperation and communication between USDA, HHS' Food and Drug Administration and Centers for Disease Control and Prevention, and EPA in the regulatory oversight over genetically engineered plants and the foods derived from such plants. Under the MOU, USDA's Office of Animal and Plant Health Inspection Service/Biotechnology Regulatory Services (APHIS/BRS) and EPA agree to share with each other information about genetically engineered plants and the foods derived from such plants, including non-public information exempt from public disclosure usually referred to as ''confidential business information'' and/or ''trade secrets.''

List of Subjects

Environmental protection, Confidential business information, Interagency agreements, Memorandum of Understanding, Pesticides and pests.

Dated: March 8, 2012.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012–6926 Filed 3–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0231; FRL–9342–6]

Metaldehyde; Notice of Receipt of Request To Voluntarily Amend a Registration To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend its metaldehyde product registration to terminate or delete one or more uses. The request would delete metaldehyde use in or on all but the following sites: Artichokes, blueberries, caneberries (bingleberry, black raspberry, blackberry, boysenberry, dewberry, lowberry, marionberry, olallieberry, red raspberry, youngberry) and other berries (currant, elderberry, gooseberry, huckleberry, loganberry, lingonberry, juneberry, salal), citrus, lettuce, cole crops and other leafy greens (broccoli, Brussels sprouts, cabbage, cauliflower, cavalo, broccolo, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens), grass grown for seed, ornamentals, prickly pear cactus, tomato, strawberry, watercress, and use sites with directions for use in state and/or Federal invasive mollusk eradication operations. The request would not terminate the last metaldehyde product registered for use in the United States. EPA intends to grant this request 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 request, or unless the registrant withdraws its request. If this request is granted, any sale, distribution, or use of products listed in this notice will be permitted after the uses are terminated

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 September 19, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0231, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0231. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–7070; email address: *bloom.jill@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. 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

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 submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of the Request To Amend the Registration To Terminate Uses

This notice announces receipt by EPA of a request from Lonza, Inc., to amend its metaldehyde product registration to terminate certain uses. Metaladehyde is a molluscide used to kill snail and slug pests of various food, seed, and ornamental plants. Lonza holds the sole registration for a metaldehyde manufacturing-use product. The Agency determined in 2006 that some uses of metaldehyde were not eligible for reregistration. In correspondence dated February 23, 2012, Lonza requested that EPA amend the registration of its metaldehyde manufacturing-use product to terminate certain uses. The subject pesticide product registration is identified in Table 1 of Unit III. Because the current metaldehyde manufacturing-use product label lists only broad categories of permitted use sites (e.g., terrestrial food crops, outdoor noncommercial homeowner uses), it is not feasible to reference specific use sites that will be deleted. The request by Lonza is for an amendment that

terminates all uses except a subset that has been determined to be eligible for reregistration. The excepted uses are artichokes, blueberries, caneberries (bingleberry, black raspberry, blackberry, boysenberry, dewberry, lowberry, marionberry, olallieberry, red raspberry, youngberry) and other berries (currant, elderberry, gooseberry, huckleberry, loganberry, lingonberry, juneberry, salal), citrus, lettuce, cole crops and other leafy greens (broccoli, Brussels sprouts, cabbage, cauliflower, cavalo, broccolo, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens), grass grown for seed, ornamentals, prickly pear cactus, tomato, strawberry, watercress, and use sites with directions for use in state and/or Federal invasive mollusk eradication operations. Lonza has requested that it be allowed to sell existing stocks of its product as currently labeled for 18 months after the use terminations become effective, and that other registrants be permitted to use existing stocks until those stocks are exhausted. The registrant's request will not terminate the last metaldehyde products registered in the United States. Other registrants who formulate Lonza's metaldehyde manufacturing-use product into end-use products have submitted new labels that conform to the Reregistration Eligibility Decision. Coupled with the actions of the formulators, the request by Lonza would terminate the last metaldehyde pesticide products registered in the United States for all but the specific uses cited in this notice.

III. What action is the agency taking?

This notice announces receipt by EPA of a request from a registrant to amend its metaldehyde product registration to terminate certain uses. The affected product and the registrant making the request are identified in Tables 1 and 2 of this unit.

Unless the request is withdrawn by the registrant or the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registration.

TABLE 1—METALDEHYDE PRODUCT REGISTRATION SUBJECT TO THE PENDING REQUEST FOR AMENDMENT

Registration No.	Product name	Company
6836–107	Lonza Meta Metaldehyde Technical Molluscicide	Lonza, Inc.

Table 2 of this unit shows the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY AMENDMENT

EPA company No.	Company name and address
6836	Lonza, Inc., 90 Boroline Road, Allendale, NJ 07401

IV. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The metaldehyde registrant has not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the request.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the 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.

VI. 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 action. If the request for the amendment to terminate uses is granted, the Agency intends to publish the use termination order in the **Federal Register**.

In any order issued in response to this request for an amendment to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the product listed in Table 1 of Unit III.

Once EPA has approved the product label reflecting the requested amendments to terminate uses, the registrant will be permitted to sell or distribute the product under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the use termination order, unless other restrictions have been imposed. Thereafter, the registrant will be prohibited from selling or distributing the product identified in Table 1 of Unit III. with labels which include the deleted uses, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of the product with labels which include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 15, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–7078 Filed 3–22–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items From March 21, 2012 Open Meeting

March 20, 2012.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Wednesday, March 21, 2012, Open Meeting and previously listed in the Commission's Notice of March 14, 2012. These items have been adopted by the Commission.

Item Nos.	Bureau	Subject
1	Media	*Title:* Revision of the Commission's Program Access Rules; News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control (MB Docket No. 07–18) and Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al. (MB Docket No. 05–192) *Summary:* The Commission will consider a Notice of Proposed Rulemaking exploring whether to retain, sunset, or relax the exclusive contract prohibition of the program access rules and whether to revise the program access rules to better address alleged violations.
2	Media	*Title:* Creation of a Low Power Radio Service (MM Docket No. 99–25) and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations (MB Docket No. 07–172, RM–11338) *Summary:* The Commission will consider a Fourth Report and Order and Third Order on Reconsideration to implement a market-specific FM translator processing scheme, adopt application caps to prevent trafficking, and modify policies to expand opportunities to rebroadcast AM stations on FM translators.
3	Media	*Title:* Creation of a Low Power Radio Service (MM Docket No. 99–25) *Summary:* The Commission will consider a Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration regarding proposals to implement the Local Community Radio Act and to strengthen the LPFM service, including second adjacent channel waiver procedures, interference remediation requirements, and modification of eligibility, ownership, and selection standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–7265 Filed 3–21–12; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Intra-Agency Appeal Process: Guidelines for Appeals of Material Supervisory Determinations and Guidelines for Appeals of Deposit Insurance Assessment Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Guidelines.

SUMMARY: On March 20, 2012, the Federal Deposit Insurance Corporation (''FDIC'') Board of Directors (''Board'') adopted revised Guidelines for Appeals of Material Supervisory Determinations (''SARC Guidelines'') and also adopted revised Guidelines for Appeals of Deposit Insurance Assessment Determinations (''AAC Guidelines''). These revisions are technical and ministerial and were made to reflect changes in the organization of the FDIC's Board, of its offices and divisions, and in the categories of institutions that it supervises. In addition, both guidelines have been amended to effect limited and minor language changes.

DATES: The revised SARC Guidelines and the revised AAC Guidelines became effective on March 20, 2012.

For Further Information Concerning the SARC Guidelines Contact: Serena L. Owens, Associate Director, Division of Risk Management Supervision, (202) 898–8996; Dianne Dixon, Associate Director, Division of Depositor and Consumer Protection, (202) 898–6568; Catherine Needham, Chief, Institution Monitoring, Office of Complex Financial Institutions, (917) 320–2721; Jeannette E. Roach, Counsel, Legal Division, (202) 898–3785, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

For Further Information Concerning the AAC Guidelines Contact: Serena L. Owens, Associate Director, Division of Risk Management Supervision, (202) 898–8996; Dianne Dixon, Associate Director, Division of Depositor and Consumer Protection, (202) 898–6568; Catherine Needham, Chief, Institution Monitoring, Office of Complex Financial Institutions, (917) 320–2721; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

1. Guidelines for Appeals of Material Supervisory Determinations

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law No. 103–325, 108 Stat. 2160) (''Riegle Act'') required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations.

The Riegle Act defines the term ''independent appellate process'' to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

On March 21, 1995, the FDIC's Board of Directors adopted the original Guidelines for Appeals of Material Supervisory Determinations, which established procedures governing the SARC, whose purpose was to consider

and decide appeals of material supervisory determinations as required by the Riegle Act. (60 FR 15923 (Mar. 28, 1995)). The SARC Guidelines were amended, after notice and comment in 2004, changing the composition and procedures of the SARC. (69 FR 41479 (Jul. 9, 2004)).

The SARC Guidelines were amended again in 2008, after notice and comment, to modify the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for determinations, or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, and to make limited technical amendments. (73 FR 54822 (Sept. 23, 2008)).

Although the FDIC considered it desirable in those instances to garner comments regarding the guidelines, notice and comment rulemaking was not required, and the FDIC pointed out that notice and comment rulemaking need not be employed in making future amendments. The SARC Guidelines were again modified in 2010, without notice and comment, to extend the decisional deadline for requests for review and to clarify the decisional deadline for written decisions of the SARC. (75 FR 20358 (Apr. 19, 2010)). The amendments proposed here are nonsubstantive, limited, and technical in nature. Notice and comment rulemaking was not used in making the present amendments.

2. Guidelines for Appeals of Deposit Insurance Assessment Determinations

The FDIC Board of Directors created the AAC in 1999 to provide a high-level process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC Divisions. Responsibility for deposit insurance assessments is shared by the Division of Finance (''DOF''), the Division of Insurance and Research (''DIR'') and, in some cases, by the former Division of Supervision and Consumer Protection (''DSC'') (now the Division of Risk Management Supervision (''RMS''), the Division of Depositor and Consumer Protection (''DCP''), and the Office of Complex Financial Institutions (''OCFI''). DOF is responsible for calculating the assessments owed by individual insured institutions based on assessment risk rates assigned by DIR, which may use supervisory information provided by RMS, DCP, or OCFI.

Institutions that dispute the computation of their quarterly assessment payments may request revision of their assessment payments by following the procedures set forth at 12 CFR 327.3(f). Institutions that dispute their risk assignment—or dispute any determination for which review may be requested as provided in Part 327—may request review by following the procedures set forth at 12 CFR 327.4(c).

The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions pursuant to 12 CFR 327.3(f) and 327.4(c). Having complied with those procedures and received a determination from the appropriate division, an institution dissatisfied with that division's determination may file an appeal with the AAC. After reviewing the determination made at the division level, the AAC will issue a final decision.

The AAC Guidelines were promulgated by the FDIC on July 2, 2004, following notice and comment rulemaking. (69 FR 41479 (Jul. 9, 2004)). Although the FDIC considered it desirable in that instance to garner comments regarding the AAC Guidelines, notice and comment rulemaking was not required and need not be used in making future amendments. Limited technical and clarifying amendments were made to the AAC Guidelines in 2010, without notice and comment. (75 FR 20358 (Apr. 19, 2010)). Notice and comment rulemaking was not used in making the present amendments.

Amendments to the Guidelines

The SARC Guidelines describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The SARC Guidelines have been amended to provide that, in place of the former DSC, now RMS, DCP, and OCFI will make material supervisory determinations appropriate to each division. Material supervisory determinations made by the appropriate division or office director, are subject to challenge under the guidelines by insured depository institutions. Finally, the SARC Guidelines have been amended to reflect the transfer of supervisory authority over state savings associations from the former Office of Thrift Supervision (''OTS'') to the FDIC pursuant to Section 312(b)(2)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 1522).

The AAC Guidelines have been amended in light of the reconfiguration of the FDIC Board of Directors by the Dodd-Frank Act, which replaced the Director of the OTS with the Director of the Consumer Financial Protection Bureau (''CFPB''). The amended AAC Guidelines substitute a deputy or special assistant to the CFPB FDIC Director on the AAC in place of a deputy or special assistant to the OTS FDIC Director. The amended AAC Guidelines also recognize that RMS, DCP, or OCFI may, in addition to DIR and DOF, handle assessment determinations or other determinations for which review may be requested, as appropriate under Part 327 of the regulations.

In addition, both the SARC Guidelines and the AAC Guidelines have been amended to effect limited and minor language changes.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (''Riegle Act'') required the Federal Deposit Insurance Corporation (''FDIC'') to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (''guidelines'') describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (''SARC'').

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area

of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible to Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks, insured branches of foreign banks, and state savings associations) and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines.

Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (''DCP''), the Division of Risk Management Supervision (''RMS''), or the Office of Complex Financial Institutions (''OCFI''); and

(n) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Decisions to initiate informal enforcement actions (such as memoranda of understanding); and

(e) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action, and FDIC determinations regarding compliance with an existing formal enforcement action.

A formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for violations of the Equal Credit Opportunity Act or the Fair Housing Act. For the purposes of these guidelines, remarks in a Report of Examination do not constitute written notice of intent to pursue formal enforcement remedies.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division or Office, either DCP, RMS, or OCFI, or to filing an appeal with the SARC under these guidelines.

F. Filing a Request for Review With the Appropriate Division or Office

An institution may file a request for review of a material supervisory determination with the Division or Office that made the determination, either the Director, DCP, Director, RMS, or Director, OCFI (''Director,'' ''Division Director,'' or ''Office Director''), 550 17th Street NW., Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

The Division or Office Director will issue a written determination on the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division or Office Director.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division or Office Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for

filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division or Office Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division or Office Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division or Office Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division or Office Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division or Office Director's determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division or Office Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division or Office Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division or Office Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal, Withdrawal and Rejection

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off under Section D, above.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

N. Publication of Decisions

SARC decisions will be published, and the published SARC decisions will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain discretion to waive any provision of the guidelines for good cause. The SARC may adopt supplemental rules governing its operations; order that material be kept confidential; and consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, or the Director, RMS, or the Director, OCFI, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division or Office Director to resolve the allegation of retaliation.

* * * * *

Guidelines for Appeals of Deposit Insurance Assessment Determinations

A. Introduction

The Assessment Appeals Committee (''AAC'') was formed in 1999 and, pursuant to the direction of the FDIC Board of Directors, functions as the appellate entity responsible for making final determinations pursuant to Part 327 of the FDIC's regulations regarding the assessment risk assignment, the assessment payment computation, and other related assessment determinations affecting insured depository institutions. Institutions that dispute the computation of their quarterly assessment payments must comply with the time limits and other filing requirements set forth at 12 CFR 327.3(f). Generally, any such request may be made within 90 days of the quarterly assessment invoice for which a revision is requested. Institutions that dispute their risk assignment—or dispute any determination for which review may be requested as provided in Part 327—must comply with the time limits and other filing requirements set forth at 12 CFR 327.4(c). Generally, an institution may request review within 90 days from the date it receives notice of its risk assignment or other disputed determination from the FDIC. The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions pursuant to 12 CFR 327.3(f) and 327.4(c). The procedures set forth in these guidelines apply to all appeals to the AAC.

B. AAC Membership

The following individuals comprise the five (5) voting members of the AAC, representing each member of the FDIC Board of Directors: (1) One inside FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) one of the deputies or special assistants to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy or special assistant to the Office of the Comptroller of the Currency's member on the FDIC's Board of Directors; (4) a deputy or special assistant to the Consumer Financial Protection Bureau's member on the FDIC's Board of Directors; and (5) a deputy or special assistant to either the Vice Chairperson or the inside Director (Appointive), whoever is not the AAC Chairperson. The General Counsel is a non-voting member of the AAC. The FDIC Chairperson may designate alternative member(s) for the AAC if vacancies occur. A member of the AAC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the AAC to act on his or her behalf.

C. Institutions Eligible To Appeal

These guidelines apply to all depository institutions insured by the FDIC.

D. Determinations Subject To Appeal

The AAC, upon appeal by an insured depository institution, reviews determinations of the Director of the Division of Insurance and Research, the Director of the Division of Risk Management Supervision, the Director of the Division of Depositor and Consumer Protection, or the Director of the Office of Complex Financial Institutions (''OCFI'') made pursuant to the procedures set forth at 12 CFR 327.4(c) regarding the assessment risk assignment provided by the FDIC to the institution—or any determination for which review may be requested as provided in Part 327—and renders a final determination. The AAC also, upon appeal by an insured depository institution, reviews determinations made pursuant to 12 CFR 327.3(f) by the Director of the Division of Finance regarding the computation of the institution's assessment payment and renders a final determination.

E. Appeal to the AAC

An institution that does not agree with the written determination rendered by the appropriate Division or Office Director pursuant to 12 CFR 327.4(c) and 327.3(f) must appeal that determination to the AAC within 30 calendar days from the date of the determination. The Director's determination will inform the institution of the 30-day time limit for filing with the AAC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time period may result in denial of the appeal by the AAC.

If a Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the AAC, transfer the matter directly to the AAC without issuing a determination. Notice of such a transfer will be provided to the institution. A Director may also request guidance from the AAC Chairperson as to procedural or other questions relating to any request for revision or request for review.

F. Filing With the AAC

An appeal to the AAC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division or Office Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

G. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the AAC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in either a written determination or a direct referral to the AAC, may be appealed to the AAC. Evidence not presented for review at the division level may be submitted to the AAC only if authorized by the AAC Chairperson. The institution should set forth all of the reasons, legal and factual, why it

disagrees with the determination. Nothing in the AAC administrative process shall create any discovery or other such rights.

H. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

I. Oral Presentation

The AAC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The AAC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the AAC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its position on the issues raised in the appeal and to respond to any questions from the AAC. The AAC may also require that FDIC staff participate as the AAC deems appropriate.

J. Dismissal and Withdrawal

An appeal may be dismissed by the AAC if it is not timely filed, if the legal or factual basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

K. Scope of Review and Decision

The AAC will review all submissions concerning an appeal, review the final determination being appealed, consider any other matters it deems in its discretion to be appropriate, and issue a written decision within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. The AAC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

L. Publication of Decisions

AAC decisions will be published and the published AAC decisions will be redacted to avoid disclosure of exempt information. In cases where redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published decisions of the AAC may be cited as precedent in appeals to the AAC.

M. AAC Guidelines Generally

Appeals to the AAC will be governed by these guidelines. The AAC will retain the discretion to waive any provision of the guidelines for good cause; the AAC may adopt supplemental rules governing AAC operations; the AAC may order that material be kept confidential; and the AAC may consolidate similar appeals.

N. Effect on Deposit Insurance Assessment Payments

The use of the procedures set forth in these guidelines by an insured institution will not affect, delay, or impede the obligation of that institution to make timely payment of any deposit insurance assessment.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of March, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–7049 Filed 3–22–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for Beat Down Blood Pressure Challenge

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

Award Approving Official: Jodi Daniel, Director, Office of Policy and Planning.

ACTION: Notice.

SUMMARY: The Office of the National Coordinator for Health Information Technology (ONC), in partnership with Million Hearts, an HHS initiative to prevent a million heart attacks and strokes in five years, announces the launch of the *Beat Down Blood Pressure Video Challenge.* This challenge is an open call for the public to create and submit short, compelling videos sharing how they use health IT or consumer e-health tools to manage high blood pressure. Health care providers are also encouraged to apply to demonstrate how they use electronic health records and other health IT to manage their patients' high blood pressure. This is the second in a series of Health IT video contests that will occur throughout 2012. The goal of this video contest series is to generate content that will be used to motivate and inspire others to leverage technology to be more engaged partners in improving their health and health care. Each challenge will be a call to action for members of the public to create a short video clip [2 minutes or less] on a particular theme, and will award cash prizes to winners in several categories.

DATES: Effective on March 21, 2012.

FOR FURTHER INFORMATION CONTACT: Erin Poetter, Consumer e-Health Policy Analyst, *erin.poetter@hhs.gov* | 202.205.3310.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

We invite the general public to create short (<2 min long), compelling videos sharing how they use *health IT* or *consumer e-health tools* to manage high blood pressure. Videos will demonstrate how health IT is used to support blood pressure control through activities such as routine monitoring of blood pressure, taking blood pressure medications as prescribed, and maintaining a healthy lifestyle that helps lower blood pressure. High blood pressure (aka ''hypertension'') affects one in three adults in the U.S. and is sometimes referred to as the ''silent killer'' because it damages the brain, heart, eyes, and kidneys while causing no symptoms. If left untreated, high blood pressure can result in strokes, heart attacks, and kidney failure. Fortunately there are steps that each of us can take to prevent or manage high blood pressure and change our future health for the better.

Participants can demonstrate how they use health IT or consumer e-health tools to monitor their blood pressure, take medication as prescribed to maintain low blood pressure, and/or make lifestyle changes that reduce your risks and enhance heart health. Participants may also discuss how they are partnering with their health care provider to leverage health IT to better monitor and manage their blood pressure.

Health care providers can demonstrate how they use electronic health records and other health IT to manage their patients' hypertension, help them take their medications as prescribed, and help their patients adopt healthy habits that enhance control of blood pressure.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual,

whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of the Office of the National Coordinator.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

All individual members of a team must meet the eligibility requirements.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registration Process for Participants

1. During the Challenge Submission Period, visit *http://BloodPressure.Challenge.gov* and register (Registration is free) or log in with an existing ChallengePost account. After a Contestant signs up, a confirmation email will be sent to the email address provided. The Contestant must use the confirmation email to verify his or her email address. The registered Contestant will then be able to enter a Submission.

2. On *BloodPressure.Challenge.gov,* click ''Accept this challenge'' to register your interest in participating. This step ensures that you will receive important challenge updates.

3. Create a video and ensure the following (please read the Official Rules on *http://BloodPressure.challenge.gov* for complete requirements):

a. Your video shares ONE activity to prevent high blood pressure or monitor blood pressure.

b. Your video demonstrates ONE technology used as part of or in support of the activity to prevent or monitor high blood pressure.

c. Your video encourages viewers to visit *www.HealthIT.gov.*

d. Your video is no longer than 2 minutes.

4. Confirm that you have read and agreed to the Official Rules. A Contestant will be required to fill out the submission form on *BloodPressure.Challenge.gov* and must provide:

- The title of the Video;
- A link to the Video on *YouTube.com* or *Vimeo.com* (the Video should be no longer than 2 minutes);
- A text description of an activity to prevent high blood pressure or monitor blood pressure and how technology is a part of or supportive of the activity;
- A transcript of the words spoken or sung in the video;
- Categories for the participant type (consumer/caregiver or healthcare provider), activity type, and the technology featured in the video; and
- Uploaded consent forms for everyone who appears in the video regardless of age.

All individuals that appear in a Video must complete and sign the Video Consent Form. If a minor appears in the Video, the minor's parent/legal guardian must also sign the Video Consent Form. A Submission will not be considered complete and eligible to win prizes without a completed Video Consent Form being uploaded from all individuals that appear in the Video. All completed Video Consent Forms must include a handwritten signature, and be scanned, combined in to a single file (ZIP, PDF, or doc), and uploaded on the submission form on *BloodPressure.Challenge.gov.*

AMOUNT OF THE PRIZE

Winner	Prize	Quantity
Consumer Monitoring Prize	$1,000	1
Consumer Taking Meds Prize	1,000	1
Consumer Prevention Prize	1,000	1
Provider Monitoring Prize	1,000	1
Provider Med Management Prize	1,000	1
Popular Choice	500	1

Basis Upon Which Winner Will Be Selected

To be considered for a Category Prize, a Submission must meet the following award category requirements:

Category	Requirements
Consumer Monitoring Prize	Video must describe how a patient, consumer or caregiver engages in an activity to monitor blood pressure using health information technology.
Consumer Taking Meds Prize	Video must describe how a patient, consumer or caregiver engages in an activity related to taking blood pressure medications as prescribed using health information technology.
Consumer Prevention Prize	Video must describe how a patient, consumer or caregiver engages in an activity related to maintaining a healthy lifestyle that supports low blood pressure and uses health information technology as part of or in support of the activity.
Provider Monitoring Prize	Video must describe how a healthcare provider (e.g. doctor, nurse, pharmacist, etc.) engages in an activity related to monitoring patients' blood pressure using health information technology.

Category	Requirements
Provider Med Management Prize	Video must describe how a professional healthcare provider engages in an activity to help patients manage their blood pressure medication using health information technology.

Submissions that meet category requirements will be evaluated by an internal panel of judges for Category Prizes based on the following criteria (to be equally weighted):

1. *Quality of the Idea* (Includes elements such as the relevance and originality of your use of health IT)
2. *Implementation of the Idea* (Includes elements such as the quality of the video content, narrative and visual appearance)
3. *Potential Impact on health IT adoption* (Includes whether the video is compelling, instructive, and easy to follow so that others can perform similar activities using health technology)

The one (1) Contestant whose Submissions earns the highest overall score in their respective category will win, respectively, the prizes identified below in Section 8. In the event of a tie, winners will be selected based on their score on the criteria described in (1), then (2), and finally (3). If there is still a tie then the winner will be selected based on a vote by the judging panel.

Authority: 15 U.S.C. 3719.

Dated: March 16, 2012.

Erin Poetter,

Consumer e-Health Policy Analyst, Office of the National Coordinator for Health Information Technology (ONC), Office of the Secretary (OS).

[FR Doc. 2012–6979 Filed 3–22–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12GN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Ron Otten, CDC at 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

ROPS Attributes Identified by Distribution Channel Intermediaries—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is commonly acknowledged that it is in the public interest to develop more effective ways of determining the incentives, impediments and barriers to the adoption of items of safety equipment that are known to be effective in reducing occupational traumatic injury and death.

Despite the development of rollover protective structures (ROPS), an item of safety equipment which has proven preventive effectiveness against the leading cause of occupational fatality in the Agricultural, Forestry and Fishing industrial sector (tractor rollovers), the incidence of fatal and nonfatal traumatic occupational injury within the sector remains elevated. Tractor rollovers remain the leading cause of fatal injury in this sector, occurring at a rate of 5.4 per every 100,000 workers (NSC). Some 125 fatalities occurred each year from this cause, for the years 1992–2002; both fatal injuries and nonfatal injuries were overwhelmingly associated with the use of tractors that were not protected by ROPS.

The efficacy of rollover protective structures in preventing injury and death from crushing injuries is well established. Various research efforts have been undertaken over a period of time and in international venues, especially the Scandinavian countries, to confirm the role of ROPS in preventing injury from this source. As a result of these studies, the efficacy of ROPS in preventing this type of injury was widely accepted by manufacturers internationally and in this country. Beginning in the mid-1980's, manufacturers of farm tractors in this country universally elected to protect tractor operators through the incorporation of integral ROPS within the design and manufacture of all new farm tractors sold for domestic use. However, significant numbers of older, unprotected farm tractors remain in use. ROPS are available for many of these unprotected tractors, as a retrofit item manufactured by fabricators or by original equipment manufacturers. However, a number of tractors remain in operation without rollover protective structures, and operators of these tractors are at an elevated risk of injury.

ROPS are generally provided to end users by tractor parts dealers, who constitute channel intermediaries between the manufacturer and the consumer. However, little is known about the decision processes that tractor parts dealers follow in deciding whether or not to recommend, source or provide this item of safety equipment to end users. The current project will generate ranking scores for the importance accorded to various issues of concern to tractor parts dealers; these most-important items were previously developed through qualitative research studies. The Northeast Equipment Dealers' Association (NEDA), a trade group representing tractor parts dealers, and which is active in 12 Northeast and Mid-Atlantic U.S. States, will represent the collective membership of the distribution channel intermediaries. Some 500 establishments hold membership in NEDA, and each of these establishments will be surveyed to provide ranking criteria.

CDC requests OMB approval to collect customized information, from 500 NEDA establishments, over a one-month period. This information will be of two kinds: Demographic information on the client base served by the NEDA establishment, and importance ranking

of issues related to the provision of ROPS or the ROPS configuration itself, as self-selected ranking criteria, following the maximum difference scaling methodology.

This information will allow CDC to compile a systematic, quantifiable inventory of preference data for a group that is considered representative of tractor parts dealers nationwide. Additionally, this data will allow for segmentation of response by groups with particularized interests.

The survey pilot questionnaire will be administered by the New York Center for Agricultural Medicine and Health (NYCAMH). Following the administration of a pilot test questionnaire to assess comprehension and message comprehension, a finalized questionnaire will be routinely submitted to NEDA establishments by electronic mail. The estimated burden per response is 17 minutes. Each respondent establishment will receive a personalized advance notification email, followed by an email with a link to the CDC Web site.

CDC anticipates that routine information collection will begin in August 2012. Assuming full participation, the total estimated burden for the one-time retrospective data collection is 148 hours which includes 500 respondents for the survey and 20 respondents from the pilot project. At a reduced response rate of 80%, total burden would be 450 participants for a total of 134 hours, assuming replacement and thus full participation for pilot participants. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Tractor parts dealers	NIOSH/NYCAMH Parts Dealers Survey.	450	1	17/60	128
Tractor parts dealers	NIOSH/NYCAMH Parts Dealers Pilot.	20	1	17/60	6
Total					134

Dated: March 19, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7030 Filed 3–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–0740]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Medical Monitoring Project (MMP)—0920–0740, exp. 5/31/2012—Extension with change—National Center for HIV, Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This proposed data collection supplements the HIV/AIDS surveillance programs in 23 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS and will incorporate data elements from two data collections: Supplement to HIV/AIDS Surveillance (SHAS) project (0920–0262) and the Adult/Adolescent Spectrum of HIV Disease (ASD). Both projects stopped data collection in 2004.

Although CDC receives surveillance data from all U.S. states, these supplemental surveillance data are needed to make population-based national estimates of key indicators, related to the quality of HIV-related ambulatory care, the severity of need for HIV-related care and services, and HIV-related behaviors and clinical outcomes.

This project collects data on behaviors and clinical outcomes from a probability sample of HIV-infected adults receiving care in the U.S. Collection of data from interviews with HIV-infected patients provides information on patient demographics, and the current levels of behaviors that may facilitate HIV transmission: Sexual and drug use behaviors; patients' access to, use of and barriers to receiving HIV-related secondary prevention services; utilization of HIV-related medical services; and adherence to drug regimens. Collection of data from patient medical records provides information on: Demographics and insurance status; the prevalence and incidence of AIDS-defining opportunistic illnesses and co-morbidities related to HIV disease; the receipt of prophylactic and antiretroviral medications; and whether patients are receiving screening and treatment according to Public Health Service guidelines. No other Federal agency collects national population-based behavioral and clinical information from HIV-infected adults in care. The data are expected to have significant implications for policy, program development, and resource allocation at the state/local and national levels.

The Centers for Disease Control and Prevention requests approval for a 3-year extension with change for the previously approved Medical Monitoring Project (MMP) 0920–0740 exp. 5/31/2012). Data will be collected through in-person and telephone-administered, computer-assisted interviews conducted by trained interviewers in 23 Reporting Areas (16 states, Puerto Rico and 6 separately funded cities), and through medical record abstraction by trained abstractors. The methods for the project have been updated to include telephone interviews as an interviewing option. Otherwise, the project activities and methods will remain the same as those

used in the previously approved data collection period.

A standard interview will be conducted with approximately 96% of patients, and will take 45 minutes. A short interview will be conducted with patients who are too ill to complete the standard interview or when the interview must be translated. The short interview, which will be conducted with approximately 4% of patients, will take approximately 20 minutes.

Medical record abstractions will be completed for on all eligible participants. Minimal data on all sampled patients will be extracted from an existing HIV case surveillance database, the national HIV/AIDS Reporting System [HARS]. These data will be used for quality control (to ensure patients were not sampled for participation in MMP more than once), to assess nonresponse bias, to prospectively monitor respondents' care utilization and treatment, and to make inference to the population of persons living with HIV in the United States.

The interview and minimum data set data collection instruments have been revised based on experience in previous data collection cycles, but these changes will not affect the burden per respondent. The medical record abstraction forms have not changed. CDC's current goal is to interview 80% of 9,400 patients or 7,520, 96% of whom (a total of 7,219 patients) will complete the standard interview and 4% of whom (a total of 301 patients) will complete the short interview. Because the number of sampled patients is greater (by 62 patients) than for the previously approved information collection, the total burden (in hours) will increase by 37 hours, from 8,500 to 8,537.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

The estimated annualized burden hours are 8,537.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Sampled, Eligible HIV-Infected Patients	Standard interview.	7,219	1	45/60
Sampled, Eligible HIV-Infected Patients Unable to Complete the Standard Interview.	Short interview.	301	1	20/60
Facility office staff pulling medical records	.....	7,520	1	3/60
Facility office staff providing Estimated Patient Loads	.....	936	1	2
Facility office staff providing patient lists	.....	1,030	1	30/60
Facility office staff approaching participants for enrollment	.....	3,120	1	5/60

Dated: March 19, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7028 Filed 3–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0314]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act of 44 U.S.C., Chapter 35. To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The National Survey of Family Growth (NSFG)—(0920–0314, Expiration 05/31/2012)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''family formation, growth, and dissolution,'' as well as ''determinants of health'' and ''utilization of health care'' in the United States. This three-year clearance request includes the data collection in 2012–2015 for the continuous NSFG.

The National Survey of Family Growth(NSFG) was conducted periodically between 1973 and 2002, and continuously since 2006, by the National Center for Health Statistics, CDC. Each year, about 14,000 households are screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews average 60 minutes for males and 80 minutes for females. The response rate since 2006 is about 77 percent. This submission requests approval for three years.

The NSFG program produces descriptive statistics which measure factors associated with birth and pregnancy rates, including contraception, infertility, marriage, divorce, and sexual activity, in the US population 15–44; and behaviors that affect the risk of sexually transmitted diseases (STD), including HIV, and the medical care associated with contraception, infertility, and pregnancy and childbirth.

NSFG data users include the DHHS programs that fund it, including CDC/NCHS and nine others (The Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD); the Office of Population Affairs (DHHS/OPA); the Office of the Assistant Secretary for Planning and Evaluation (DHHS/OASPE); the Children's Bureau (DHHS/ACF/CB); the ACF's Office of Planning, Research, and Evaluation (OPRE); the CDC's Division of HIV/AIDS Prevention (CDC/DHAP); the CDC's Division of STD Prevention (CDC/DSTD); the CDC's Division of Cancer Prevention and Control (CDC/DCPC); and the CDC's Division of Birth Defects and Developmental Disabilities. The NSFG is also used by state and local governments; private research and action organizations focused on men's

and women's health, child well-being, and marriage and the family; academic researchers in the social and public health sciences; journalists, and many others.

No questionnaire changes are requested in the first 15 months of this clearance; some limited changes may be requested after that, to be responsive to emerging public policy issues.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 7,192.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Respondents/Instrument	Number of responses	Responses per respondent	Average burden per response (in hours)
Screener	14,000	1	3/60
Female Interview	2,750	1	1.5
Male Interview	2,250	1	1
Verification	1,400	1	5/60

Dated: March 19, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7026 Filed 3–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–12GF]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Adoption, Health Impact and Cost of Smoke-Free Multi-Unit Housing—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) and National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The health risks associated with cigarette smoking and exposure to Secondhand Smoke (SHS) are well established. In 2006, the Surgeon General's report documented that over the past two decades, the scientific, engineering and medical literature have established a wide range of adverse health effects from SHS, including cardiovascular disease, lung, breast and nasal sinus cancer, asthma and other respiratory illnesses, and low birth weight and sudden infant death syndrome in newborn babies. SHS exposure is estimated to result in $5 billion a year in direct medical costs and an additional $5 billion in indirect costs in the U.S. The Surgeon General's report concluded that there is no safe level of exposure to SHS.

Approximately 85 million Americans reside in multi-unit housing (MUH) facilities, which comprise nearly 30% of all housing in the U.S. There are significant challenges to maintaining a smoke-free environment in MUH residential settings. Although residents may choose not to smoke, they may still be exposed to SHS through the routine operation of facility-wide heating, ventilating and air conditioning systems.

The private sector has begun to institute smoke-free policies in MUH on a voluntary basis through changes in leasing agreements and advertising, however, smoking restrictions in MUH have largely been limited to common areas and spaces, not individual dwelling units. There are no studies that have examined the impact of smoke free policies by comparing pre- and post SHS exposure and changes in health outcomes after local governments adopt regulatory policies that protect residents from the effects of exposure to SHS in their housing units.

CDC proposes to conduct a study to address the gap in scientific evidence about the impact of jurisdiction-wide strategies (hereafter known as smoke-free MUH policies) to protect individuals from SHS in MUH settings. Through the collection and analysis of environmental and biometric data, the study will demonstrate how SHS exposure can be measured and will quantify how exposure changes when smoke-free policies are implemented. In addition, the study will examine barriers and facilitators to implementation of smoke-free policies in MUH and the cost-effectiveness of these policies. CDC is authorized to conduct this investigation by the Public Health Service Act. The activities are funded through the Prevention and Public Health Fund of the Patient Protection and Affordable Care Act, which is designed to expand and sustain the necessary infrastructure for preventing disease, detecting it early, and managing conditions before they become severe.

The proposed study consists of two components. The first component involves data collection in Los Angeles County, California, and includes a number of ''intervention'' communities that have adopted, or are scheduled to adopt, smoke-free MUH laws by mid-2012, as well as ''comparison'' communities that have not adopted laws regulating SHS in MUH. Communities being considered for participation in the study as intervention communities include Culver City, Huntington Park,

Lawndale, Sierra Madre, San Fernando, San Gabriel, Carson, Artesia, and Hawthorne. Communities being considered for participation in the study as comparison communities include Temple City, Hawaiian Gardens, Monrovia, Maywood, Alhambra, La Puente, Monterey Park, Inglewood, and San Dimas.

The availability of both intervention and comparison communities will enable use of a quasi-experimental, baseline and follow-up study design for examining the impact of smoke-free policies in MUH. Over a period of two years, a sample of 500 MUH residents and 130 MUH operators will be selected from intervention cities and a comparable sample of 500 MUH residents and 130 MUH operators will be selected from comparison cities. Baseline and follow-up surveys will be conducted involving MUH operators, MUH residents, and parents of children who reside in MUH facilities. Also, MUH residents will be recruited to collect environmental air quality data, and both parents and children who reside in MUH facilities will be recruited to provide saliva samples. These samples will be analyzed for the presence of cotinine, a biomarker of exposure to SHS.

The second component of the study will involve focus groups in Maine, Minnesota, and Florida—states have adopted and implemented smoke-free MUH policies for a longer period of time, either as a response to local regulations or voluntarily. A one-time survey of MUH operators will be conducted, and a sample of 12 MUH operators will be selected from communities in Minnesota, Maine, and Florida. In addition, a total of 120 residents will be selected to participate in short focus groups, with a maximum of 4 focus groups per state. The primary data sources for this component of the study will be (a) quantitative data obtained from interviews with 12 MUH operators (4 operators in the three study locations, using the same questionnaire as Los Angeles County); (b) qualitative data from participants from up to 12 focus groups (an expected total of 120 residents); and (c) quantitative data on the same residents from pre-focus group questionnaires. Results from studies in these three geographic areas and from cities in Los Angeles County, will provide insights more useful at the national population level than results based solely on information collected in Los Angeles County.

OMB approval is requested for two years, with first data collection beginning approximately May 2012. Participation is voluntary. The only cost to respondents is their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
MUH Operators in Los Angeles County.	Telephone Script for Recruitment of MUH Operators in Los Angeles County.	130	1	5/60	11
	MUH Operators Survey	130	2	75/60	325
MUH Operators in Minnesota, Maine and Florida.	Telephone Script for Recruitment of MUH Operators in MN, ME, FL.	6	1	10/60	1
	MUH Operators Survey	6	1	75/60	8
MUH Residents in Los Angeles County.	MUH Residents Survey-Core	500	2	45/60	750
	MUH Residents Survey-Supplement—Survey of Child's Health.	250	2	15/60	125
	Saliva Cotinine Samples (Adult)	500	2	10/60	167
	Saliva Cotinine Samples (Child)	250	2	10/60	83
	Airborne Particle Monitoring Diary	100	1	75/60	125
MUH Residents in Minnesota, Maine and Florida.	Telephone Screening Interview Script for MUH Resident Focus Groups.	60	1	10/60	10
	Resident Pre-Focus Group Demographic and Attitudinal Survey.	60	1	5/60	5
	MUH Resident Focus Group Guide—Process Oriented.	60	1	1	60
	MUH Resident Focus Group Guide—Outcome Oriented.	60	1	1	60
Total					1,730

Dated: March 19, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7024 Filed 3–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–11EC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at 1600 Clifton

Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems—New—National Center for Emerging and Zoonotic Infectious Diseases—Office of Infectious Diseases—Centers for Disease Control and Prevention

Background and Brief Description

In the United States (U.S.), drinking water distribution systems are designed to deliver safe, pressurized drinking water to our homes, hospitals, schools and businesses. However, the water distribution infrastructure is 50–100 years old in much of the U.S. and an estimated 240,000 water main breaks occur each year. Failures in the distribution system such as water main breaks, cross-connections, back-flow, and pressure fluctuations can result in potential intrusion of microbes and other contaminants that can cause health effects, including acute gastrointestinal and respiratory illness.

Approximately 200 million cases of acute gastrointestinal illness occur in the U.S. each year, but we lack reliable data to assess how many of these cases are associated with drinking water. Further, data are even more limited on the human health risks associated with exposure to drinking water during and after the occurrence of low pressure events (such as water main breaks) in drinking water distribution systems. A study conducted in Norway from 2003–2004 found that people exposed to low pressure events in the water distribution system had a higher risk for gastrointestinal illness. A similar study is needed in the United States.

The purpose of this data collection is to conduct an epidemiologic study in the U.S. to assess whether individuals exposed to low pressure events in the water distribution system are at an increased risk for acute gastrointestinal or respiratory illness. This study would be, to our knowledge, the first U.S. study to systematically examine the association between low pressure events and acute gastrointestinal and respiratory illnesses. Study findings will inform the Environmental Protection Agency (EPA), CDC, and other drinking water stakeholders of the potential health risks associated with low pressure events in drinking water distribution systems and whether additional measures (e.g., new standards, additional research, or policy development) are needed to reduce the risk for health effects associated with low pressure events in the drinking water distribution system.

We will conduct a cohort study among households that receive water from five water utilities across the U.S. The water systems will be geographically diverse and will include both chlorinated and chloraminated systems. These water utilities will provide information about low pressure events that occur during the study period using a standardized form (approximately 12 events per utility). Utilities will provide address listings of households in areas exposed to the low pressure event and comparable households in an unexposed area to CDC staff, who will randomly select participants and send them an introductory letter and questionnaire. Consenting household respondents will be asked about symptoms and duration of any recent gastrointestinal or respiratory illness, tap water consumption, and other exposures including international travel, daycare attendance or employment, consumption of under-cooked or unpasteurized food, animal contacts, and recreational water exposures. Study participants may choose between two methods of survey response: A mail-in paper survey and a web-based survey. Participation in this study will be voluntary. No financial compensation will be provided to study participants. The study duration is anticipated to last 24 months. An estimated 5,200 individuals will be contacted and we anticipate 2,080 utility customers (18 years of age or older) will consent to participate in this study. We will conduct a pilot study (duration 3 months) prior to launching the full epidemiologic study. An estimated 1,000 individuals will be contacted and we anticipate 400 adults (18 years of age or older) will consent to participate in the pilot study. The total estimated annualized hours associated with this study, including the pilot, is expected to be 467.

There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
Full Study:					
Households	Introductory letter	2,600	1	1/60	44
	Web-based questionnaire	624	1	12/60	125
	Paper-based questionnaire	416	1	12/60	84
Utility employees	Household Listing	5	6	15/60	6
	Water sample collection	5	6	1	30
	Low pressure event form	5	6	4	120
Pilot Study Households	Introductory letter	500	1	1/60	8
	Web-based questionnaire	120	1	12/60	24
	Paper-based questionnaire	80	1	12/60	16
Utility employees	Household Listing	1	2	15/60	1
	Water sample collection	1	2	1	2
	Low pressure event form	1	2	4	8
Total (Full & Pilot)					467

Dated: March 19, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7020 Filed 3–22–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–179 and CMS–R–74]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Plan Under Title XIX of the Social Security Act (Base plan pages, Attachments, Supplements to attachments); *Use:* State Medicaid agencies complete the plan pages and CMS reviews the information to determine if the State has met all of the provisions that the State has chosen to implement. If the requirements are met, CMS will approve the amendments to the State's Medicaid plan giving the State the authority to implement the flexibilities. For a State to receive Medicaid Title XIX funding, there must be an approved Title XIX State plan. In addition to the revisions associated with the 60-day notice that published on December 16, 2011 (76 FR 78264), additional changes have been made to the Pre-Print (Attachment 4.19–B) subsequent to the publication of that notice; *Form Number:* CMS–179 (OCN 0938–0193); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,120; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Falecia Smith at 202–260–5991. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System (IEVS) Reporting and Supporting Regulations Contained in 42 CFR 431.17, 431.306, 435.910, 435.920, and 435.940–960; *Use:* The information collected is used to verify the income and eligibility of Medicaid applicants and recipients, as required by section 1137 of the Social Security Act. Under Section 1137, States must request applicants' Social Security Numbers and use that number to verify the income and eligibility information contained on each application through data matches with specified agencies and entities. The State must use information collected by unemployment compensation agencies and the Internal Revenue Service to the extent useful.

The Qualifying Individual Program Supplemental Funding Act of 2008 amended section 1903(r) of the Social Security Act to incorporate the requirement that States include data matching through the Public Assistance Reporting Information System (PARIS) in their Income and Eligibility Verification Systems (IEVS). PARIS is a system for matching data from certain public assistance programs, including State Medicaid programs, with selected Federal and State data for purposes of facilitating appropriate enrollment and retention in public programs. States are required to sign an agreement to participate in PARIS as a condition of receiving Medicaid funding for automated data systems (including the Medicaid Management Information System).

States can use the PARIS data match to ensure that individuals enrolled in Medicaid or other public assistance benefits in one State are not receiving duplicate benefits based on simultaneous enrollment in the Medicaid program or other public benefit programs in another State. In certain circumstances, PARIS may also be used as a tool to identify individuals who have not applied for Medicaid coverage, but who may be eligible based on their income.

Subsequent to the publication of the 60-day notice that published on January 4, 2012 (77 FR 291), a State Plan Amendment template has been added to the PRA package and the burden estimate and Supporting Statement have been revised; *Form Number:* CMS–R–74 (OCN 0938–0467); *Frequency:* Monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 134,865. (For policy questions regarding this collection contact Barbara Washington at 410–786–9964. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on April 23, 2012.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: March 19, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–7066 Filed 3–22–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2901–FN]

Medicare and Medicaid Programs; Approval of the Application by the American Association for Accreditation of Ambulatory Surgery Facilities for Deeming Authority for Rural Health Clinics

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the American Association for Accreditation of Ambulatory Surgery Facilities

(AAAASF) for recognition as a national accreditation program for rural health clinics (RHCs) seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective March 23, 2012 through March 23, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a rural health clinic (RHC) provided certain requirements are met. Sections 1861(aa) and 1905(l) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an RHC. The minimum requirements that a RHC must meet to participate in Medicare are set forth in regulation at 42 CFR part 491, subpart A. The conditions for Medicare payment for RHCs are set forth at 42 CFR 405, subpart X. Applicable regulations concerning provider agreements are located in 42 CFR part 489 and those pertaining to facility survey and certification are in 42 CFR part 488, subpart A.

For an RHC to enter into a provider agreement with the Medicare program, the RHC must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1861(aa) of the Act and part 491 of our regulations. Subsequently, the RHC is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare conditions for certification. There is an alternative, however, to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if an entity demonstrates through accreditation by an approved national accreditation organization (AO) that all applicable Medicare conditions are met or exceeded, we may ''deem'' that entity as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the AO requires the accredited entities to meet requirements that are at least as stringent as the Medicare conditions.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 calendar days after the date of receipt of a complete application, with any documentation necessary to make a determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On October 28, 2011, we published a proposed notice in the **Federal Register** (76 FR 66929) announcing AAAASF's request for approval of its RHC accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 and § 488.8, we conducted a review of AAAASF's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of AAAASF's RHC accreditation standards to our current Medicare RHC conditions for certification.
- A documentation review of AAAASF's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and AAAASF's ability to provide continuing surveyor training.

+ Compare AAAASF's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate AAAASF's procedures for monitoring providers or suppliers found to be out of compliance with AAAASF's program requirements. The monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess AAAASF's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish AAAASF's ability to provide us with electronic data and reports necessary for effective validation and assessment of AAAASF's survey process.

+ Determine the adequacy of staff and other resources.

+ Review AAAASF's ability to provide adequate funding for performing required surveys.

+ Confirm AAAASF's policies with respect to whether surveys are announced or unannounced.

+ Obtain AAAASF's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the October 28, 2011 proposed notice also solicited public comments regarding whether AAAASF's requirements met or exceeded the Medicare conditions for certification for RHCs We received no comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between AAAASF's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared AAAASF's RHC accreditation requirements and survey process with the Medicare conditions for certification and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of AAAASF's RHC application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 491.2, AAAASF revised its crosswalk to ensure all RHC definitions contained correct regulatory text.
- To meet the staffing requirements at § 491.8(a)(2), AAAASF revised its standards to ensure the physician member of the RHC staff carries out the responsibilities set out at § 491.8(b).
- To meet the requirements at § 491.9(a)(3), AAAASF revised its standards to ensure the RHC provides the required laboratory services.
- To meet the requirements at § 488.4, AAAASF revised its policies to ensure its surveyors are appropriately qualified and trained.

• To meet the requirements at section 2008D of the SOM, AAAASF revised its policies related to the accreditation effective date.

• To meet the requirements at section 2200F of the SOM, AAAASF revised its policies to ensure their surveys are complete, accurate, and consistent.

• To meet the requirements at section 2700A of the SOM, AAAASF revised its policies to ensure all RHC surveys are conducted unannounced.

• To meet the requirements at section 2704 of the SOM, AAAASF revised its RHC Accreditation Facility Handbook to include pre-survey preparation requirements.

• To meet the requirements at section 2728 of the SOM, AAAASF modified its policies regarding timeframes for sending and receiving a plan of correction.

• To meet the requirements at section 3010 of the SOM, AAAASF revised its policies on immediate jeopardy.

• To meet the requirements at chapter five of the SOM, AAAASF revised its policies to ensure all complaints are appropriately triaged, investigated and resolved.

• To meet the requirements at Exhibit 7 of the SOM, AAAASF revised its policies to ensure survey deficiencies are cited at the appropriate level based on the surveyor documentation.

• To verify AAAASF's continued compliance with the provisions of this final notice, CMS will conduct a follow-up survey observation within 1 year of the date of publication of this notice.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that AAAASF's requirements for RHCs meet or exceed our requirements. Therefore, we approve AAAASF as a national accreditation organization for RHCs that request participation in the Medicare program, effective March 23, 2012 through March 23, 2016.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 8, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6331 Filed 3–22–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3258–PN]

Medicare and Medicaid Programs; Application From Det Norske Veritas Healthcare (DNVHC) for Continued Approval of Its Hospital Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an application from Det Norske Veritas Healthcare (DNVHC) for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 23, 2012.

ADDRESSES: In commenting, please refer to file code CMS–3258–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3258–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3258–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Easterling (410) 786–0482, Patricia Chmielewski, (410) 786–6899, or Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard,

Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospital provided certain requirements are met. Section 1861(e) of the Social Security Act establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at part 488. The regulations at part 482 specify the conditions that a hospital must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospitals.

Generally, in order to enter into an agreement, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 482. Thereafter, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to have met the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by us.

DNVHC's current term of approval for their hospital accreditation program expires September 26, 2012.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of DNVHC's request for continued approval of its hospital accreditation program. This notice also solicits public comment on whether DNVHC's requirements meet or exceed the Medicare conditions for participation for hospitals.

III. Evaluation of Deeming Authority Request

DNVHC submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospital accreditation program. This application was determined to be complete on January 27, 2012. Section 1865(a)(3)(A) of the Social Security Act (the Act), requires that within 60 days of receipt of an organization's complete application to be a CMS-approved accrediting organization, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of DNVHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of DNVHC's standards for a hospital as compared with CMS' hospital conditions of participation.
- DNVHC's survey process to determine the following:
  + The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  + The comparability of DNVHC's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  + DNVHC's processes and procedures for monitoring a hospital found out of compliance with DNVHC's program requirements. These monitoring procedures are used only when DNVHC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.7(d).
  + DNVHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  + DNVHC's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
  + The adequacy of DNVHC's staff and other resources, and its financial viability.
  + DNVHC's capacity to adequately fund required surveys.
  + DNVHC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
  + DNVHC's agreement to provide us with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all

comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: March 13, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6856 Filed 3–22–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2377–FN]

Medicare and Medicaid Programs; Approval of the Community Health Accreditation Program for Continued CMS-Approval of its Home Health Agency Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Community Health Accreditation Program (CHAP) for recognition as a national accreditation program for home health agencies (HHAs) seeking to participate in the Medicare or Medicaid programs.

DATES: This final notice is effective March 31, 2012 through March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636, or Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a home health agency (HHA) provided certain requirements are met. Sections 1861(m) and (o) and 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an HHA. Under this authority, the minimum requirements that an HHA must meet to participate in Medicare are set forth in regulations at 42 CFR part 484, which determine the basis and scope of HHA covered services, and the conditions for Medicare payment for home health care. Regulations concerning provider agreements are at part 489 and those pertaining to activities relating to the survey and certification of facilities are at part 488.

Generally, in order to enter into a provider agreement with the Medicare program, HHAs must first be certified by a State survey agency as complying with conditions or requirements set forth in part 484. Thereafter, the HHA is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, there is an alternative to State compliance surveys. Accreditation by a nationally-recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accreditation organization applying for CMS-approval of its accreditation program under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accreditation organizations are set forth at § 488.4 and § 488.8(d)(3). Section 488.8(d)(3) requires accreditation organizations to reapply for continued CMS-approval of its accreditation program every six years, or sooner as determined by us. CHAP's term of approval as a recognized accreditation program for HHAs expires March 31, 2012.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Proposed Notice

In the September 23, 2011, **Federal Register** (76 FR 59136), we published a proposed notice announcing CHAP's request for continued CMS approval of its HHA accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of CHAP's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of CHAP's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and, (5) survey review and decision-making process for accreditation.
- A comparison of CHAP's HHA accreditation standards to our current Medicare HHA conditions for participation.
- A documentation review of CHAP's survey processes to:

++ Determine the composition of the survey team, surveyor qualifications, and the ability of CHAP to provide continuing surveyor training.

++ Compare CHAP's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ Evaluate CHAP's procedures for monitoring providers or suppliers found to be out of compliance with CHAP program requirements. The monitoring procedures are used only when the CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

++ Assess CHAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ Establish CHAP's ability to provide us with electronic data and reports necessary for effective validation and assessment of CHAP's survey process.

++ Determine the adequacy of staff and other resources.

++ Review CHAP's ability to provide adequate funding for performing required surveys.

++ Confirm CHAP's policies with respect to whether surveys are announced or unannounced.

++ Obtain CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the September 23, 2011 proposed notice (76 FR 59136) also solicited public comments regarding whether CHAP's requirements met or exceeded the Medicare conditions of participation for HHAs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between CHAP's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards and survey process contained in CHAP's application with the Medicare HHA conditions for participation and our State Operations Manual (SOM). Our review and evaluation of CHAP's application for continued CMS-approval were conducted as described in section III of this final notice, and yielded the following:

- To meet the requirements at § 488.12, CHAP revised its accreditation decision letters to ensure that they contain all the required elements necessary for the Regional Office (RO) to render a decision regarding approval of a provider agreement for participation in Medicare.
- To meet the requirements at Chapter Five, section 5075.9 of the SOM, CHAP revised its policies to ensure all compliant investigations are conducted within 45 calendar days, following receipt of a complaint that does not rise to the level of immediate jeopardy.
- To meet the clinical records requirements at Appendix B of the SOM, CHAP developed and implemented a monitoring plan to ensure the minimum number of home visits with clinical record reviews is completed during a survey.
- CHAP amended its crosswalk to ensure current CHAP standards are clearly crosswalked to the following regulatory requirements: §§ 484.12(b); 484.12(c); 484.14(b); 484.14(i)(3); 484.30(a); 484.32; 484.34(a); 486.36(b)(3)(ii); 484.36(d)(4)(ii); 484.36(d)(4)(iii); 484.36(e); 484.38; 484.48; 484.52; 484.55; 484.55(a)(1); 485.55(b)(1); and 484.55(d)(2).

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that CHAP's HHA accreditation program requirements meet or exceed our requirements. Therefore, we approve CHAP as a national accreditation organization for HHAs that request participation in the Medicare program, effective March 31, 2012 through March 31, 2018.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: March 12, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6598 Filed 3–22–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7024–N]

Medicare, Medicaid, and Children's Health Insurance Programs; Meeting of the Advisory Panel on Outreach and Education (APOE), May 2, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, May 2, 2012 from 8:30 a.m. to 4 p.m., Eastern Daylight Time (EDT).

Deadline for Meeting Registration, Presentations and Comments: Wednesday, April 18, 2012, 5 p.m., EDT.

Deadline for Requesting Special Accommodations: Wednesday, April 18, 2012, 5 p.m., EDT.

ADDRESSES: *Meeting Location:* The Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Meeting Registration, Presentations, and Written Comments: Jennifer Kordonski, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Kordonski via email at *Jennifer.Kordonski@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the ''**ADDRESSES**'' section of this notice or by telephone at the number listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section of this notice, by the date listed in the ''**DATES**'' section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the ''**ADDRESSES**'' section of this notice by the date listed in the ''**DATES**'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Kordonski, (410) 786–1840, or on the Internet at *http://www.cms.gov/FACA/04_APOE.asp* for additional information. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a

meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel). Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed * * * by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2011 (76 FR 11782, March 3, 2011).

Pursuant to the amended charter, the Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP).
- Enhancing the Federal government's effectiveness in informing Medicare, Medicaid, and CHIP consumers, providers, and stakeholders pursuant to education and outreach programs of issues regarding these and other health coverage programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health plan options.
- Building and leveraging existing community infrastructures for information, counseling and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under health care reform.

The current members of the Panel are: Samantha Artiga, Principal Policy Analyst, Kaiser Family Foundation; Joseph Baker, President, Medicare Rights Center; Philip Bergquist, Manager, Health Center Operations, CHIPRA Outreach & Enrollment Project and Director, Michigan Primary Care Association; Marjorie Cadogan, Executive Deputy Commissioner, Department of Social Services; Jonathan Dauphine, Senior Vice President, AARP; Barbara Ferrer, Executive Director, Boston Public Health Commission; Shelby Gonzales, Senior Health Outreach Associate, Center on Budget & Policy Priorities; Jan Henning, Benefits Counseling & Special Projects Coordinator, North Central Texas Council of Governments' Area Agency on Aging; Warren Jones, Executive Director, Mississippi Institute for Improvement of Geographic Minority Health; Cathy Kaufmann, Administrator, Oregon Health Authority; Sandy Markwood, Chief Executive Officer, National Association of Area Agencies on Aging; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Ana Natale-Pereira, Associate Professor of Medicine, University of Medicine & Dentistry of New Jersey; Megan Padden, Vice President, Sentara Health Plans; David W. Roberts, Vice-President, Healthcare Information and Management System Society; Julie Bodën Schmidt, Associate Vice President, National Association of Community Health Centers; Alan Spielman, President & Chief Executive Officer, URAC; Winston Wong, Medical Director, Community Benefit Director, Kaiser Permanente and Darlene Yee-Melichar, Professor & Coordinator, San Francisco State University.

The agenda for the May 2, 2012 meeting will include the following:

- Welcome and Listening Session with CMS Leadership
- Recap of the Previous (February 7, 2012) Meeting
- Affordable Care Act Initiatives
- An opportunity for Public Comment
- Meeting Summary, Review of Recommendations and Next Steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 13, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–6609 Filed 3–22–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Mother and Infant Home Visiting Program Evaluation: Baseline survey data collection.

OMB No.: 0970–0402.

Description: The Administration for Children and Families (ACF) and Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services (HHS) have launched a national evaluation called the Mother and Infant Home Visiting Program Evaluation (MIHOPE, formerly called the Maternal, Infant, and Early Childhood Home Visiting Evaluation). This evaluation, mandated by the Affordable Care Act, will inform the federal government about the effectiveness of the newly established MIECHV program in its first few years of operation, and provide information to help states develop and strengthen home visiting programs in the future. By systematically estimating the effects of home visiting programs across a wide range of outcomes and studying the variation in how programs are implemented, MIHOPE will provide valuable information on the effects of these programs on parents and children. This includes investigating the effects of home visiting on maternal and child well-being, how those effects vary for

different home visiting approaches, and how variations in program design and implementation influence program fidelity and impacts.

MIHOPE includes two phases: Phase 1 includes site recruitment, baseline data collection for families, and collection of data on program implementation; Phase 2 includes follow up data collection for families. The purpose of the current document is to request approval of data collection efforts needed for Phase 1 of MIHOPE and to request a waiver for subsequent 60 day notices for Phase 2. Phase I will include data collected on state plans for MIECHV funds, data on families when they enter the study, and data on program implementation. For site recruitment, information will come from discussions with MIECHV state administrators, and program managers of local MIECHV programs. Activities related to site recruitment have begun under emergency clearance authorization (0970–0402). For baseline data on families and program implementation, those data collection efforts include the following: (1) Surveys of parents when they enter the study, (2) annual semi-structured interviews with state MIECHV administrators, (3) annual surveys of home visiting program site managers, (4) annual surveys of home visiting program site supervisors, (5) annual surveys of program site home visitors, (6) annual surveys of administrators of community resources that provide services relevant to home visited families; (7) logs maintained by supervisors on supervisory activities, (8) logs maintained by home visitors on service delivery, and (9) qualitative interviews and focus groups with staff at participating program sites in each state. These data will be used to measure characteristics of participating families at the time of enrollment into the study; characteristics of program staff; factors for service delivery; and program implementation, fidelity, and costs. Phase 2 will collect information on family outcomes around the time of the child's first birthday. This notice does not seek comment on these follow-up data collection activities. The baseline family survey will be used to collect information on background and experiences when families enter the study. The remaining data collection will be used to collect information on organizational and individual-level factors that influence how home visiting services are delivered.

Respondents: Enrolled parents; state MIECHV administrators; home visiting program managers, supervisors, and home visitors; and administrators of community resources.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of resopnses per respondent	Average burden hours per respondent	Total annual burden hours
Telephone contact with state administrators	49	1	1	49
First round visits with state administrators	18	1	1.5	27
Second round visits with state administrators	15	1	1.5	23
Visits and calls with local program directors	120	1	3	360
Family baseline survey	1700	1	1	1700
Baseline state administrator interview	8	1	2	16
12-month state administrator interview	8	1	2	16
Baseline survey of program managers, part 1	29	1	0.5	15
Baseline survey of program managers, part 2	29	1	1	29
Baseline survey of program managers, part 3	29	1	1	29
12-month survey of program managers	29	1	2	58
Baseline supervisor survey	33	1	1.25	42
12-month supervisor survey	33	1	1.25	42
Baseline home visitor survey	170	1	1.25	213
12-month home visitor survey	170	1	1.25	213
Community service providers survey	510	1	0.1	51
Other home visiting programs survey	142	1	0.1	15
Supervisor logs	33	60	0.2	396
Home visitor logs	170	16	0.2	2040
Program manager group interview	29	1	1.5	44
Supervisor group interview	33	1	1.5	50
Home visitor group interview	85	1	1.5	128
Home visitor individual interview	85	1	1.5	128
Interview participant questionnaire	232	1	0.05	12

Estimated Total Annual Burden Hours: 5,696.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.E0P.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: March 19, 2012.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2012–6977 Filed 3–22–12; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0274]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with adverse event reporting and recordkeeping for dietary supplements as required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA).

DATES: Submit either electronic or written comments on the collection of information by May 22, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793, *Denver.Presley@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes 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 the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act —21 U.S.C. 379aa–1(b)(1) (OMB Control Number 0910–0635)—Extension

The DSNDCPA (Public Law 109–462, 120 Stat. 3469) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting and recordkeeping for dietary supplements and nonprescription drugs marketed without an approved application. Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa–1(b)(1)) requires the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States to submit to FDA all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch form (FDA 3500A) when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report.

Section 761(e)(1) of the FD&C Act (21 U.S.C. 379aa–1(e)(1)) requires that responsible persons maintain records related to the dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years.

As required by section 3(d)(3) of the DSNDCPA, FDA issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. In the **Federal Register** of July 14, 2009 (74 FR 34024), FDA announced the availability of guidance entitled ''Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The guidance discusses how, when, and where to submit serious adverse event reports for dietary supplements and followup reports. The guidance also provides FDA's recommendation on records maintenance and access for serious and non-serious adverse event reports and related documents.

The guidance recommends that the responsible person document its attempts to obtain the minimum data elements for a serious adverse event report. Along with these records, the guidance recommends that the responsible person keep the following other records: (1) Communications between the responsible person and the initial reporter of the adverse event and between the responsible person and any other person(s) who provided information about the adverse event, (2) the responsible person's serious adverse event report to FDA with attachments, (3) any new information about the adverse event received by the responsible person, and (4) any reports to FDA of new information related to the serious adverse event report.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 U.S.C. Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
21 U.S.C. 379aa–1(b)(1)—Serious adverse event reports for dietary supplements	480	17	8,160	2	16,320
21 U.S.C. 379aa–1(c)(2)—Followup reports of new medical information	120	17	2,040	1	2,040
					18,360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience with similar adverse event reporting programs and the number of serious adverse event reports and followup reports received in the past 2 years. All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event mandatory reporting. In 2007, we estimated in the final rule entitled ''Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements'' (72 FR 34752, June 25, 2007) that there were 1,460 such firms. FDA estimates that, in 2012, there are approximately 1,600 such firms, based on the estimate of 1,460 provided in the rule, with a two to three percent annual rate of growth applied.

FDA received 830 initial serious adverse event reports in FY2010. The number of reports more than doubled to 1,777 in FY2011. We expect this trend to continue and, in fact, increase due to continued industry compliance with mandatory reporting rules. Based on this, FDA expects to receive over the next 3 years an increasing number of reports per year: We estimate that we will receive 3,500 in 2012; 7,000 in 2013; and 14,000 in 2014; for an annual average of 8,166.66 per year, rounded to 8,160. Based on the Agency's records, the average number of initial reports per year on a per firm basis during 2010 and 2011 was 17. Thus, FDA estimates that, on average over the next 3 years, 480 firms will file 17 initial dietary supplement serious adverse event reports, for a total of 8,160 total annual responses.

FDA estimates that it will take respondents an average of 2 hours per report to collect information about a serious adverse event associated with a dietary supplement and report the information to FDA on Form FDA 3500A. Thus, the estimated total annual hour burden of initial dietary supplement serious adverse event reports is 16,320 hours (8,160 responses × 2 hours) as shown in row 1 of Table 1.

If a respondent that has submitted a serious adverse event report receives new information related to the serious adverse event within 1 year of submitting the initial report, the respondent must provide the new information to FDA in a followup report. FDA estimates that 25 percent of serious adverse event reports related to dietary supplements will have a followup report submitted, resulting in approximately 2,040 followup reports submitted annually (8,160 × 0.25 = 2,040). Assuming that 25 percent of submitters of initial reports will submit followup reports (480 × 0.25 = 120) and the average number of followup reports per year per firm to be 17, FDA estimates that, on average over the next 3 years, 120 firms will file 17 followup reports, for a total of 2,040 total annual responses. We estimate that each followup report will require an hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the guidance. The estimated total annual hour burden for followup reports of new information is 2,040 hours (2,040 responses × 1 hour) as shown in row 2 of Table 1.

The total reporting hour burden is 18,360 hours, which equals the burden for the mandatory reports (16,320) plus the burden for the followup new information (2,040).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 U.S.C. Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per record-keeping	Total hours
Dietary Supplement Adverse Event Records (21 U.S.C. 379aa–1(e)(1)).	1,600	74	118,400	0.5 (30 minutes).	59,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

All 1,600 dietary supplement manufacturers, packers, or distributors, are subject to serious adverse event mandatory recordkeeping, thus FDA estimates that there are a total of 1,600 recordkeepers. FDA further estimates that each recordkeeper will keep approximately 74 records per year, for a total of 118,400 records. The Agency estimates that assembling and filing these records, including any necessary photocopying, will take approximately 30 minutes, or 0.5 hours, per record. Therefore, 118,400 records × 0.50 hours = 59,200 total hours. FDA bases its estimates on its experience with similar adverse event reporting programs.

Once the documents pertaining to an adverse event report have been assembled and filed under the Safety Reporting Portal, FDA expects the records retention burden to be minimal, as the Agency believes most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice.

Dated: March 19, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6961 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 31, 2012, from 8 a.m. to 4:30 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *GIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 200–436, synthetic human secretin, sponsored by Repligen Corporation, proposed for use with magnetic resonance imaging (MRI) to improve pancreatic duct visualization for the detection of duct abnormalities to enhance clinical decision making in patients with known or suspected pancreatitis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 16, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 8, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 9, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–6971 Filed 3–22–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Patient Navigator Outreach and Chronic Disease Prevention Demonstration Program (OMB No. 0915–0346)—[Revision]

This is a revision to a data collection previously approved for the Patient Navigator Outreach and Chronic Disease Prevention Demonstration Program (PNDP). Authorized under section 340A of the Public Health Service Act, as amended by Section 3510 of the Patient Protection and Affordable Care Act,

PNDP supports the development and operation of projects to provide patient navigator services to improve health outcomes for individuals with cancer and other chronic diseases, with a specific emphasis on health disparities populations. Award recipients are to use grant funds to recruit, assign, train, and employ patient navigators who have direct knowledge of the communities they serve in order to facilitate the care of those who are at risk for or who have cancer or other chronic diseases, including conducting outreach to health disparities populations.

As authorized by the statute, an evaluation of the outcomes of the program must be submitted to Congress. The purpose of these data collection instruments, including navigated patient data intake, VR–12 health status, patient navigator survey, patient navigator encounter/tracking log, patient medical record and clinic data, clinic rates (baseline measures), quarterly reports, and focus group discussion guides is to provide data to inform and support the Report to Congress for: the quantitative analysis of baseline and benchmark measures; aggregate information about the patients served and program activities; and recommendations on whether patient navigator programs could be used to improve patient outcomes in other public health areas.

A single instrument, the Client Opinion Form, has been added to this collection, resulting in an increase of 579.2 burden hours.

The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Navigated Patient Data Intake Form	4,827	1.0	4,827.00	0.50	2,413.50
VR–12 Health Status Form	4,827	2.0	9,654.00	0.12	1,158.50
Client Opinion Form	4,827	1.0	4,827.00	0.12	579.24
SubTotal—Patient Burden	*4,827*				*4,151.22*
Patient Navigator Survey	46	1.0	46.00	0.20	9.20
Patient Navigator Encounter/Target Services Log	46	629.6	28,961.60	0.25	7,240.40
Patient Navigator Focus Group	46	1.0	46.00	1.00	46.00
SubTotal—Patient Navigator Burden	*46*				*7,295.60*
Patient Medical Record and Clinic Data	10	482.7	4,827.00	0.17	820.59
Annual Clinic-Wide Clinical Performance Measures Report	5	1.0	5.00	8.00	40.00
Patient Navigator Cultural Competency Checklist	10	4.6	46.00	1.17	53.82
Patient Navigator/Health System Administrator Focus Group	50	1.0	50.00	1.00	50.00
Grantee Health Care Provider Focus Group	30	1.0	30.00	1.00	30.00
Social Service Provider Focus Group	50	1.0	50.00	1.00	50.00
Quarterly Report	10	4.0	40.00	1.00	40.00
SubTotal—Grantee Burden	*165*				*1084.41*
Totals	5,038		53,409.60		12,531.23

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 16, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–7085 Filed 3–22–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research. The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 15–16, 2012.

Open: May 15, 2012, 1 p.m. to 5:15 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 6, Bethesda, MD 20892.

Closed: May 16, 2012, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 6, Bethesda, MD 20892.

Contact Person: Yvonne E Bryan, Ph.D., Special Assistant to the Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892, 301–594–1580, *bryany@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7089 Filed 3–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB LRP Review (2012/08).

Date: April 23, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: NIH/NIBIB, Democracy II Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: March 19, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7095 Filed 3–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NEXT Generation Health Study.

Date: April 18, 2012.

Time: 12:45 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 19, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7093 Filed 3–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–K LR 1.

Date: April 16, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 19, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7092 Filed 3–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mentored Patient-Oriented Research Career Development Application.

Date: April 19, 2012.

Time: 6 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 19, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7091 Filed 3–22–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0082]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0012, Certificate of Discharge to Merchant Mariners and 1625–0040, Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, and Merchant Mariner Evaluation of Fitness for Entry Level Ratings. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 22, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0082] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–0082], and must be received by May 22, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0082], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email

address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0082'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0082'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Certificate of Discharge to Merchant Mariners.

OMB Control Number: 1625–0012.

Summary: Title 46, United States Code, 10311 requires each master or individual in charge of a vessel, for each merchant mariner being discharged from the vessel to prepare a Certificate of Discharge to Merchant Mariners and two copies. These documents are used to establish evidence of sea service aboard U.S. flagged merchant vessels for merchant mariners to upgrade their credentials, establish proof of eligibility for union and other benefits, and in litigation where vessel service is an issue.

Need: The information collected provides the U.S. Coast Guard evidence of sea service used in determining eligibility for issuance of a merchant mariner credential, to determine eligibility for various benefits such as medical and retirement, and to provide information to the U.S. Maritime Administration (MARAD) on the availability of mariners in a time of a national emergency.

Forms: CG–718A.

Respondents: Shipping companies, masters or individuals in charge of a vessel.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 2,443 hours to 1,478 hours.

2. *Title:* Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, Merchant Mariner Evaluation of Fitness for Entry Level Ratings.

OMB Control Number: 1625–0040.

Summary: The Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, and Merchant Mariner Evaluation of Fitness for Entry Level Ratings, contains the following information: Signature of applicant and supplementary material required to show that the mariner meets the mandatory requirements for the credential or medical certificate sought; proof of applicant passing all applicable vision, hearing, medical, and/or physical exams; negative chemical test for dangerous drugs; discharges or other documentary evidence of sea service indicating the name, tonnage, and propulsion power of the vessels, dates of service, capacity in which the applicant served, and on what waters.

Need: Title 46 United States Code (U.S.C.) Subtitle II, Part E, Title 46 Code of Federal Regulation (CFR) Part 10, Subpart B, and Proposed Rules entitled ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and Changes to Domestic Endorsements'' (RIN 1625–AA16) (Docket No. USCG–2004–17914), (A Supplemental Notice of Proposed Rulemaking published in the **Federal Register** on August 1, 2011 (76 FR 45908)) require merchant mariner credential (MMC) and medical certificate applicants to apply at any of the Regional Examination Centers located around the nation. Merchant mariner credentials are established for individuals who are required to hold a MMC under Subtitle II. The Coast Guard has the responsibility of issuing MMCs and medical certificates to applicants found qualified as to age, character, habits of life, experience, professional qualifications, and physical fitness. The instruments contained within OMB #1625–0040 serve as a means for the applicant to apply for a MMC and medical certificate.

Forms: CG–719B, CG–719K, CG–719S, CG–719P, CG–719K/E.

Respondents: Applicants for Merchant Mariner Credentials (MMC), whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC. Applicants for Medical Certificates to include Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsed credentialed mariners, and first-class pilots as defined in the proposed rules, Implementation of the Amendments to the International Convention on STCW for Seafarers, 1978, and Changes to Domestic Endorsements (Docket No. USCG–2004–17914).

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 54,416 hours to 57,083 hours a year.

Dated: March 16, 2012.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–6981 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2001–10486]

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters: Final Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard announces the availability of a final programmatic environmental impact statement (FPEIS) for the rulemaking entitled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' (Docket No. USCG–2001–10486). This FPEIS provides an assessment of the potential

environmental impacts associated with the establishment of a ballast water discharge standard for the allowable concentration of living organisms in ships' ballast water discharged in waters of the United States. The standard will be used to approve ballast water management methods that are effective in preventing or reducing the introduction of nonindigenous species via discharged ballast water into waters of the United States.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 23, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2001–10486 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Greg Kirkbride, U.S. Coast Guard; telephone (202) 372–1479, email: *Gregory.B.Kirkbride@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2001–10486) and provide a reason for each suggestion or recommendation. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''submit a comment'' box, which will then become highlighted in blue. Insert ''USCG–2001–10486'' in the Keyword box, click ''Search'', and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and FPEIS: To view the comments and the FPEIS, go to *http://www.regulations.gov,* enter the docket number for this rulemaking (USCG–2001–10486) in the Keyword box, and click ''Search.'' If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Basis and Purpose

Under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) as reauthorized and amended in the National Invasive Species Act of 1996 (NISA), the United States Coast Guard (USCG) is the lead federal agency for implementing regulations to reduce or prevent the introduction of nonindigenous species (NIS) via shipping activities in waters of the United States.

In order to give effect to this statutory directive, on September 26, 2003, the USCG published a Notice of Intent with Request for Comments to seek public and agency input to develop the scope of this FPEIS on its proposed action to establish a ballast water discharge standard (BWDS) that would be effective in preventing the introduction and spread of NIS via discharged ballast water (68 FR 55559).

On July 28, 2004 the USCG published a final rule on a mandatory ballast water management (BWM) program for all waters of the United States, which was authorized under NISA (69 FR 44952). This program is currently in effect and requires vessels that enter U.S. waters after operating outside the U.S. Exclusive Economic Zone (EEZ) to use one of the following BWM practices: Conduct mid-ocean Ballast Water Exchange (BWE) 200 nautical miles from any shore, retain ballast water onboard, or use a USCG-approved alternative method. At the time the final rule was published, BWE and retention of ballast water were the only available ballast water management methods. On August 28, 2009, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' in the **Federal Register** (74 FR 44632) which proposed to establish a BWDS.

The purpose of the proposed action in the FPEIS is for the USCG to establish, via a rulemaking, a BWDS that is practicable, enforceable, and which would be used to approve ballast water management methods, including development and approval of shipboard BWM systems. The need for the action is to prevent or reduce the introduction of NIS via discharged ballast water from vessels entering waters of the United States after operating outside the U.S. EEZ, and from vessels operating within the U.S. EEZ.

The FPEIS evaluates the impacts to the environment from a range of alternative ballast water discharge standards. The BWDS will be used to approve ballast water management methods that are effective in preventing or reducing the introduction of NIS via discharged ballast water. The USCG believes that to prevent or reduce the introduction of NIS, the preferred alternative must be biologically protective, scientifically sound, practicable in implementation, and enforceable.

Ballast water is taken on by a vessel to increase the water draft, change the trim, regulate the stability, or maintain stress loads within acceptable operational limits. The term NIS refers to organisms found outside of their native or historical range. In cases where they invade ecosystems, NIS may alter aquatic and marine ecosystems and

biodiversity, impact commercial and recreational fisheries, cause infrastructure damage, contribute to potential risks to human health, and create economic impacts. Ballast water discharge is a major pathway for NIS introduction from vessels operating in or entering waters of the United States.

The FPEIS identifies and assesses reasonable alternatives for the proposed action, including the No Action Alternative, addresses the likely consequences of a BWDS on the human and natural environment, and presents potential mitigation measures to avoid or minimize adverse effects upon the quality of the human and natural environment. In the FPEIS, the USCG analyzed five alternatives for a BWDS. These alternatives are summarized as follows:

Alternative 1—No Action Alternative: Under the No Action Alternative, the USCG would not establish a BWDS, but would continue the existing BWM program. As currently in force, the BWM program, established in 2004, directs ships to conduct mid-ocean BWE, retain ballast water onboard, or use an environmentally sound ballast water management method approved by the USCG.

Alternatives 2–4—Ballast Water Discharge Concentrations: These alternatives differ from each other in the concentration and size classes of organisms that would be permitted and the standard is progressively more stringent from Alternative 2 to Alternative 4. Alternative 2 provides for a protective standard of less than 10 organisms per cubic meter for organisms larger than 50 microns in minimum dimension; and less than 10 organisms per milliliter for organisms between 10 and 50 microns in minimum dimension. Alternative 3 provides for a protective standard of less than 1 organism per cubic meter for organisms larger than 50 microns in minimum dimension; and less than 1 organism per milliliter for organisms between 10 and 50 microns in minimum dimension. Alternative 4 provides for a protective standard of less than 0.1 organisms per cubic meter for organisms larger than 50 microns in minimum dimension; and less than 0.1 organisms per milliliter for organisms between 10 and 50 microns in minimum dimension.

Alternative 5—Sterilization: Alternative 5 would require the removal or inactivation of all living membrane-bound organisms (including bacteria and some viruses) larger than 0.1 microns.

Alternative 2 has been selected as the USCG's preferred alternative.

The USCG will file the FPEIS with the U.S. Environmental Protection Agency (EPA), as required. The EPA will then publish an NOA in the **Federal Register**, which reports all environmental impact statements filed with the EPA during the preceding week. The publication of the EPA NOA initiates a 30-day public review period. The timing of publication of this NOA in the **Federal Register** will be coordinated with the EPA NOA. By reason of this being a rulemaking action under the Administrative Procedure Act, the Final Rule constitutes the Record of Decision and it is being published this same date, consistent with 40 CFR 1506.10(b).

Dated: March 9, 2012.

J. G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–6584 Filed 3–16–12; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet on April 13–14, 2012, in Arlington, Virginia, to discuss issues relating to recreational boating safety. The meetings will be open to the public.

DATES: NBSAC will meet Friday, April 13, 2012, from 8 a.m. to 1:30 p.m. and Saturday, April 14, 2012, from 1:30 p.m. to 3:30 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Friday, April 13, 2012 from 1:30 p.m. to 3:45 p.m., the Boats and Associated Equipment Subcommittee will meet on Friday, April 13, 2012 from 3:45 p.m. to 3:15 p.m. and on Saturday, April 14, 2012 from 8:10 a.m. to 10 a.m., and the Prevention through People Subcommittee will meet on Saturday, April 14, 2012 from 10:15 a.m. to 12 p.m. Please note that the meetings may conclude early if NBSAC has completed all business.

All written materials, comments, and requests to make oral presentations at the meeting should reach Mr. Jeff Ludwig, Assistant Designated Federal Officer (ADFO) for NBSAC by March 28, 2012. Any written material submitted by the public will be distributed to the committee and become part of the public record.

ADDRESSES: The meeting will be held in the Ballroom at the Holiday Inn Arlington, 4610 N. Fairfax Drive, Arlington, VA 22203. The hotel's Web site is: *http://www.hiarlington.com/.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than March 28, 2012, and must be identified by (USCG–2010–0164) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Fax:* (202) 372–1908.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use ''USCG–2010–0164'' as your search term.

A public comment period will be held during the meeting concerning the matters being discussed. Public comments will be limited to three minutes per speaker. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, ADFO for NBSAC, COMDT (CG–54221), 2100 2nd Street, SW., Stop 7581, Washington, DC 20593; (202) 372–

1061; *jeffrey.a.ludwig@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix 2. Congress established NBSAC in the *Federal Boat Safety Act of 1971* (Pub. L. 92–75). NBSAC currently operates under the authority of 46 U.S.C. 13110, which requires the Secretary of Homeland Security, and the Commandant of the Coast Guard by delegation, to consult with NBSAC in prescribing regulations for recreational vessels and associated equipment, and on other major safety matters. *See* 46 U.S.C. 4302(c) and 13110(c).

Meeting Agenda

The agenda for NBSAC meeting is as follows:

Friday, April 13, 2012

(1) Opening Remarks—Mr. James P. Muldoon, NBSAC Chairman and CAPT Paul Thomas, USCG Director of Prevention Policy (Acting);

(2) Receipt and discussion of the following reports:

(a) Chief, Office of Auxiliary and Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(b) Assistant Designated Federal Officer's report concerning Council administrative and logistical matters.

(3) Presentation on Progress Made on Recommendation Regarding the Development of New Life Jacket Standards and Approval Processes for Life Jackets.

(4) Presentation on the Uniform Certificate of Title Act for Vessels (model state legislation on vessel registration).

(5) Presentation on the initial results of the National Recreational Boating Survey.

(6) Public comment.

Saturday, April 14, 2012

(1) Receipt and Discussion of the Strategic Planning, Boats & Associated Equipment, and Prevention Through People Subcommittee reports.

(2) Public comment.

A more detailed agenda can be found at: *http://homeport.uscg.mil/NBSAC,* no later than March 28, 2012.

Dated: March 16, 2012.

Paul F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–6983 Filed 3–22–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–612; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; OMB Control No. 1615–0030.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 22, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–612. Should USCIS decide to revise Form I–612 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–612.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *rfs.regs@dhs.gov*. When submitting comments by email, please make sure to add OMB Control No. 1615–0030 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form I–612. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–612; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used by USCIS to determine eligibility for a waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 433 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: March 19, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–6976 Filed 3–22–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Customs and Border Protection 2012 West Coast Trade Symposium: ''Transforming Trade for a Stronger Economy''

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of trade symposium; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published a document in the **Federal Register** on March 19, 2012, announcing that it will be holding two trade symposia this year. One trade symposium will be held on the West Coast on May 10, 2012, and the other will be on the East Coast later in the year. This document corrects that March 19 document to note that the theme of this year's symposia has been changed to ''Transforming Trade for a Stronger Economy''; and to inform the public that the fees have changed for both attendance at the Long Beach Convention and Entertainment Center and for access to the live web-casting of the event; that the trade symposium will now be one hour longer, running from 8:30 a.m. until 4 p.m.; and that registration will open to the public on or about March 20, 2012.

DATES: Thursday, May 10, 2012, 8:30 a.m. to 4 p.m.

ADDRESSES: The CBP 2012 West Coast Trade Symposium will be held at the Long Beach Convention and Entertainment Center in the Grand Ballroom at 300 E. Ocean Boulevard, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: The Office of Trade Relations at (202) 344–1440, or at *tradeevents@dhs.gov.* To obtain the latest information on the Symposium and to register online, visit the CBP web site at *http://www.cbp.gov.* Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov.*

SUPPLEMENTARY INFORMATION: CBP will be holding two trade symposia this year, one on the West Coast and one on the East Coast. This year's theme for the Trade Symposium is ''Transforming Trade for a Stronger Economy.'' This document corrects a previous announcement published in the **Federal Register** (77 FR 16048) on March 19, 2012, about the West Coast trade symposium which will be held in Long Beach, California on May 10, 2012.

The corrections involve: the theme of the symposia (now called ''Transforming Trade for a Stronger Economy''); the costs for both attending the West Coast symposium live and having live webcast access to the symposium; the hours of the symposium; and when registration opens to the public. The cost for attending the symposium has been changed to $160 and the cost for the webcast has been changed to $47. Also, the trade symposium is now scheduled to be one hour longer than was originally stated, running from 8:30 a.m. until 4 p.m. Registration will open to the public on or about March 20, 2012. All other information in the March 19, 2012 notice is unchanged.

The format of this year's West Coast symposium will be held in a general session; there will be no breakout sessions. Discussions will be held regarding CBP's role in international trade initiatives and programs.

The agenda for the 2012 West Coast Trade Symposium and the keynote speakers will be announced at a later date on the CBP Web site (*http://www.cbp.gov*). The registration fee is $160.00 per person. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about March 20, 2012. All registrations must be made on-line at the CBP web site (*http://www.cbp.gov*) and will be confirmed with payment by credit card only.

Due to the overwhelming interest to attend past symposia, each company is requested to limit their company's registrations to no more than three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on the waiting list.

As an alternative to on-site attendance, access to live webcasting of the event will be available for a fee of $47.00. This includes the broadcast and historical access to recorded sessions for a period of time after the event. Registration for this is on-line as well.

Please note that the 2012 East Coast Trade Symposium will be held later in the year.

Hotel accommodations will be announced at a later date on the CBP Web site (*http://www.cbp.gov*).

Dated: March 20, 2012.

Mindy J. Wallace,

Senior Management and Program Analyst, Office of Trade Relations.

[FR Doc. 2012–7079 Filed 3–22–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5596–N–01]

Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice establishes the policies and procedures for the administration of tenant-based Section 8 Housing Choice Voucher (HCV) rental assistance under the HUD–Veterans Affairs Supportive Housing (HUD-VASH) program administered by public housing agencies (PHAs) that partner with local Department of Veterans Affairs (VA) medical facilities. This notice provides new and clarifying guidance regarding certain types of verification documentation, addition of family members after the veteran is a participant in the HCV program, termination of assistance, portability moves within the same catchment area where both PHAs have received HUD-VASH vouchers, portability moves when case management is no longer required, reallocation of HUD-VASH vouchers, and Housing Quality Standards (HQS) initial inspections.

DATES: *Effective date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Michael S. Dennis, Director, Office of Housing Voucher Programs, Office of Public Housing and Vouchers Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410–8000, telephone number 202–708–0477 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background
II. Special Rules for the HUD-VASH Voucher Program
a. Family Eligibility and Selection

b. Termination of Assistance
c. Income Eligibility
d. Initial Term of the HCV
e. Initial Lease Term
f. Ineligible Housing
g. Mobility and Portability of HUD-VASH Vouchers
h. Case Management Requirements
i. Turnover of HUD-VASH Vouchers
j. Moving-to-Work (MTW) Agencies
k. Project-Based Assistance
l. Section Eight Management Assessment Program (SEMAP)
m. Reallocation of HUD-VASH Vouchers
n. HQS Initial Inspection
III. Reporting Requirements

I. Background

Since Fiscal Year (FY) 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans authorized by section 8(o)(19) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f(o)(19)). The initiative, known as the HUD-VASH program, was initially authorized by Division K, Title II, of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007) (''2008 Appropriation Act'') (see proviso (7) under the heading ''Tenant-Based Rental Assistance''). Each annual HUD appropriation since FY 2008 has continued to authorize this program.[1] The HUD-VASH program combines HCV rental assistance for homeless veterans with case management and clinical services provided by the VA through its community medical centers. Since implementation of the program, ongoing VA case management, health, and other supportive services have been made available to homeless veterans at more than 300 VA Medical Center (VAMC) supportive services sites and Community-Based Outpatient Clinics (CBOCs) across the nation. The HUD-VASH program is a key component of reducing homelessness among veterans outlined in the Administration's Federal Strategy to Prevent and End Homelessness.

The appropriation acts funding the HUD-VASH program provide that HUD is not required to distribute assistance competitively. Rather, these acts require that HUD-VASH funding be distributed to PHAs that partner with eligible VAMCs, or other entities as designated by the VA Secretary, and based on the geographical need for such assistance, as identified by the VA Secretary. The appropriation acts also provide that funding be distributed based on PHA administrative performance, and other factors as specified by the Secretary of Housing and Urban Development (HUD Secretary) in consultation with the VA Secretary.

Based on this language, the allocation for HUD–VASH vouchers has been a collaborative, data-driven effort conducted by HUD's Offices of Community Planning and Development (CPD) and Public and Indian Housing (PIH), and the VA. The process relies primarily on three sets of data: (1) HUD's point-in-time data submitted by Continuums of Care; (2) VAMC data on contacts with homeless veterans; and (3) performance data from local PHAs and VAMCs. As noted, the VA, in consultation with HUD, has identified more than 300 VAMCs and CBOCs willing to participate in the program since 2008. There is at least one site in each of the 50 states, the District of Columbia, Puerto Rico, and Guam.

HUD, in consultation with the VA, and in consideration of a PHA's administrative performance, identified eligible PHAs located in the jurisdiction of the VAMCs or CBOCs and invited them to apply for HUD–VASH vouchers. The number of HUD–VASH vouchers awarded to each PHA was determined by HUD and the VA. Currently, between 25 and 35 rental vouchers have been awarded for each professional, full-time HUD–VASH case manager in the local VA facility. A PHA that participates in the HUD–VASH program must partner with its VAMC or CBOC. Additional information on program requirements and procedures may be found on HUD's Web site at *www.HUD.gov.*

II. Special Rules for the HUD–VASH Voucher Program

This section of the notice sets forth the design features of the HUD–VASH vouchers, including the eligibility of families, portability, case management, and the turnover of these vouchers. This notice replaces and revises the special rules published by HUD in a **Federal Register** notice on May 6, 2008 (73 FR 25026). The appropriations acts funding the HUD–VASH program authorize the HUD Secretary, in consultation with the VA Secretary, to waive, or specify alternative requirements for, any provision of any statute or regulation that the HUD Secretary administers in connection with the use of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance. Assistance made available for this program must, however, continue to remain available for homeless veterans upon turnover.

This notice outlines the waivers or alternative requirements determined by the HUD Secretary to be necessary for the effective delivery and administration of the HUD–VASH program. These waivers or alternative requirements are exceptions to the normal HCV requirements, which would otherwise govern the provision of HUD–VASH assistance. In addition, a PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program. These requests may be submitted to the HUD Secretary for review and decision through the HUD Assistant Secretary for Public and Indian Housing.

HUD–VASH vouchers under this part are administered in accordance with the HCV tenant-based rental assistance regulations set forth at 24 CFR part 982. In the HCV program, the PHA pays monthly rental subsidies so that eligible families can afford decent, safe, and sanitary housing. HUD provides housing assistance funds to the PHA and funds the PHA to administer the program.

Under the HCV tenant-based program, families select and rent units that meet program housing quality standards (HQS). If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments (housing assistance payments) (HAP) directly to the owner on behalf of the family, on a monthly basis. The family enters into a lease with the owner and pays its share of the rent to the owner in accordance with the lease. The HAP contract between the PHA and the owner covers only a single unit and a specific assisted family. If the family moves out of the leased unit, the HAP contract with the owner terminates. The family may generally move to another unit with continued assistance, so long as the family is complying with program requirements.

Unless expressly herein, all regulatory requirements and HUD directives regarding the HCV tenant-based program are applicable to HUD–VASH vouchers, including the use of all HUD-required contracts and other forms. The PHA's local discretionary policies adopted in the PHA's written administrative plan apply to HUD–VASH vouchers, unless such local policy conflicts with the requirements of the HUD–VASH vouchers outlined herein.

[1] Omnibus Appropriations Act, 2009, (Pub. L. 111–8, approved March 11, 2009); Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009); the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10, approved April 15, 2011); and Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011).

PHAs are required to maintain records that allow for the easy identification of families receiving HUD–VASH vouchers. PHAs must identify these families in the Public and Indian Housing Information Center (PIC). This recordkeeping will help ensure, in accordance with appropriations renewal language, that HUD–VASH vouchers that are in use will remain available for homeless veterans upon turnover.

The alternative requirements established in this notice apply to all PHAs that administer HUD–VASH vouchers, including those that have not received an allocation of HUD–VASH vouchers, but which administer them as a receiving PHA under the portability feature of the HCV program.

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

a. Family Eligibility and Selection

HUD–VASH-eligible families are homeless veterans and their families. The appropriations acts funding the HUD–VASH program authorize the HUD Secretary, in consultation with the VA Secretary, to waive, or specify alternative requirements for, any provision of any statute or regulation that the HUD Secretary administers in connection with the use of funds made upon a finding by the HUD Secretary that such waivers or alternatives are necessary for the effective administration and delivery of voucher assistance (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). The December 17, 2007, Explanatory Statement for the 2008 Appropriation Act states, ''The Appropriations Committees expect that these vouchers will be made available to all homeless veterans, including recently returning veterans'' (153 Cong. Rec. H16514 (daily ed., Dec. 17, 2007)).

Section 8(o)(19) of the 1937 Act, which requires homeless veterans to have chronic mental illnesses or chronic substance-use disorders with required treatment of these disorders, as a condition of receipt of HUD–VASH assistance, is waived.

VA HUD–VASH case managers will refer HUD–VASH-eligible families to the PHA for the issuance of vouchers. The PHA must accept referrals from their VA partner. Written documentation of these referrals must be maintained in the tenant file by the PHA. Therefore, the PHA will not have the authority to maintain a waiting list or apply local preferences for HUD–VASH vouchers. Accordingly, section 8(o)(6)(A) of the 1937 Act (42 U.S.C. 1437f(o)(6)(A)), in regard to preferences, is waived to provide for the effective administration of the program. In addition, 24 CFR 982.202, 982.204, and 982.207, relating to applicant selection from the waiting list and local preferences, are also waived. Sections 982.203, 982.205, and 982.206 regarding special admissions, cross-listing of the waiting list, and opening and closing the waiting list do not apply to the HUD–VASH program.

VA HUD–VASH case managers will screen all families in accordance with VA screening criteria. By agreeing to administer the HUD–VASH program, the PHA is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies. Specifically, under the HUD–VASH program, PHAs will not have the authority to screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), with one exception: PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. However, unless the family member that is subject to lifetime registration under a state sex offender registration program is the homeless veteran (which would result in denial of admission for the family), the remaining family members may be served if the family agrees to remove the sex offender from its family composition. Accordingly, the Department is exercising its authority to waive 42 U.S.C. 1437d(s); 42 U.S.C. 13661(a), (b), and (c); and 24 CFR 982.552 and 982.553 in regard to denial of admission, with the exception of § 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders.

When adding a family member after the HUD–VASH family has been admitted to the program, the rules of § 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and may apply its regular screening criteria in doing so.

In regard to verifying Social Security numbers (SSNs) for homeless veterans and their family members, an original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual along with other identifying information of the individual, is acceptable in accordance with 24 CFR part 5.216(g). In the case of the homeless veteran, the PHA must accept the *Certificate of Release or Discharge from Active Duty* (DD–214) or the VA-verified *Application for Health Benefits* (10–10EZ) as verification of SSN and cannot require the veteran to provide a SSN card. These documents must also be accepted for proof-of-age purposes in lieu of birth certificates or other PHA-required documentation. Please note that veterans are also issued photo identification cards by the VA. If such identification is required by the PHA, these cards must be accepted by the PHA in lieu of another type of government-issued photo identification. These cards may also be used to verify SSNs and date of birth.

Civil rights requirements cannot be waived. The HUD–VASH program is administered in accordance with applicable Fair Housing requirements. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination Act. These requirements prohibit discrimination on the basis of race, color, religion, sex, familial status, national origin, age, or disability.

When HUD–VASH recipients include veterans with disabilities or family members with disabilities, HUD's reasonable accommodation standards requirements apply. These standards require PHAs to make a reasonable adjustment to rules, policies, practices, and procedures when it may be necessary in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy a dwelling, the common areas of a dwelling, or participate in or access a recipient's programs and activities. These standards extends to various aspects of program implementation, including, for example, denial or termination of assistance, initial search term of the HCV, initial lease term, and informal reviews and hearings.

b. Termination of Assistance

HUD has not established any alternative requirements for termination of assistance for HUD–VASH participants. However, prior to terminating HUD–VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) and consider all relevant circumstances of the specific case, including granting reasonable accommodations for persons with disabilities in accordance with 24 CFR part 8, as well as including the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination, prior to determining whether to terminate assistance. In addition, a HUD–VASH participant family must not be terminated after admission, for a circumstance or activity that occurred before admission and was known to the PHA, but could not be considered at the time of admission due to the HUD–VASH Operating Requirements. The PHA can terminate the family's assistance only for program violations that occur after the family's admission to the voucher program.

c. Income Eligibility

The PHA must determine income eligibility for HUD–VASH families in accordance with 24 CFR 982.201. Income-targeting requirements of section 16(b) of the 1937 Act, as well as 24 CFR 982.201(b)(2), do not apply for HUD–VASH families so that participating PHAs can effectively serve the eligible population specified in the various appropriations acts; that is, homeless veterans, who may be at a variety of income levels, including low-income. The PHA may, however, choose to include the admission of extremely low-income HUD–VASH families in its income targeting numbers for the fiscal year in which these families are admitted. In conformance with normal program rules, PHAs may not deny admission to a family with zero income and must consider hardship circumstances before charging a minimum rent in accordance with 24 CFR 5.630(b).

d. Initial Term of the HCV

Recognizing the challenges that HUD–VASH participants may face with their housing search, HUD–VASH vouchers must have an initial search term of at least 120 days. Therefore, § 982.303(a), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days. Any extensions, suspensions, and progress reports will remain under the policies in the PHA's administrative plan, but will apply after the minimum 120-day initial search term.

e. Initial Lease Term

Under the HCV program, voucher participants must enter into an initial lease with the owner for one year, unless a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice. To provide a greater range of housing opportunities for HUD–VASH voucher holders, initial leases may be less than 12 months; therefore, both section 8(o)(7)(A) of the 1937 Act (42 U.S.C. 1437f(o)(7)(A)) and 24 CFR 982.309(a)(2)(ii) are waived.

f. Ineligible Housing

HUD–VASH families will be permitted to live on the grounds of a VA facility in units developed to house homeless veterans. Therefore, 24 CFR 982.352(a)(5), which prohibits units on the physical grounds of a medical, mental, or similar public or private institution, is waived for that purpose only.

g. Mobility and Portability of HUD–VASH Vouchers

An eligible family that is issued a HUD–VASH voucher must receive case management services provided by the partnering VAMC or CBOC. Therefore, special mobility and portability procedures must be established. HUD–VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by VA HUD–VASH case managers at the partnering VAMC or CBOC. Since the case managers will be identifying homeless veterans eligible to participate in the HUD–VASH program, section 8(r)(1)(B)(i) of the 1937 Act (42 U.S.C. 1437f(r)(1(B)(i)), which restricts portability in cases where the family did not reside in the jurisdiction of the PHA at the time of application for HCV assistance, and 24 CFR 982.353(a), (b), and (c), which affects where a family can lease a unit with HCV assistance, do not apply. HUD may publish public housing notices from time to time to further explain portability requirements under the HUD–VASH program.

1. Portability Moves Within Same Catchment Area (or Area of Operation) Where Case Management Is Provided by the Initial PHA's Partnering VAMC or CBOC

If the family initially leases up, or moves, under portability provisions, but the initial PHA's partnering VAMC or CBOC will still be able to provide the necessary case management services due to the family's proximity to the partnering VAMC or CBOC, the receiving PHA must process the move in accordance with the portability procedures of 24 CFR 982.355. However, since the initial PHA must maintain records on all HUD–VASH families receiving case management services from its partnering VAMC or CBOC, receiving PHAs without a HUD–VASH program must bill the initial PHA. Therefore, 24 CFR 982.355(d), which gives the receiving PHA the option to absorb the family into its own HCV program or bill the initial PHA, is not applicable.

2. Portability Moves Within Same Catchment Area Where Both PHAs Have Received HUD–VASH Vouchers

The receiving PHA may bill the initial PHA or absorb the family into its own HUD–VASH program if the VAMC or CBOC providing the initial case management agrees to the absorption by the receiving PHA and the transfer of case management. The absorption will also entail the availability of a HUD–VASH voucher and case management provision by the receiving PHA's partnering VAMC or CBOC.

3. Portability Moves Where Receiving PHA Is Beyond Catchment Area

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or CBOC to provide case management services, the VAMC must first determine that the HUD–VASH family could be served by another VAMC or CBOC that is participating in this program, and the receiving PHA must have a HUD–VASH voucher available for this family. In these cases, the families must be absorbed by the receiving PHA either as a new admission (upon initial participation in the HUD–VASH program) or as a portability move-in (after an initial leasing in the initial PHA's jurisdiction). Upon absorption, the initial PHA's HUD–VASH voucher will be available to lease to a new HUD–VASH-eligible family, as determined by the partnering VAMC or CBOC, and the absorbed family will count toward the number of HUD–VASH slots awarded to the receiving PHA.

When the receiving PHA completes the form HUD-50058 under the scenarios above, the action type that must be recorded on line 2a is ''1'' for a new admission (a family that is new to the HCV program) or ''4'' for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). Whether the family

is a new admission or a portability move-in, in section 12 of the HUD-50058 form, line 12d is always marked ''Y.'' In cases of portability where families move out of the catchment area of the initial PHA, line 12e must be 0, since the family must be absorbed, and line 12f must be left blank.

4. Portability Moves When Case Management Is No Longer Required

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply. When completing the HUD-50058, the family will continue to be coded ''VASH'' on line 2n unless the initial PHA issues the family a regular voucher, in which case the code will no longer apply.

h. Case Management Requirements

The VAMC or CBOC's responsibilities include: (1) The screening of homeless veterans to determine whether they meet the HUD–VASH program participation criteria established by the VA national office; (2) referrals of homeless veterans to the PHA; (3) providing appropriate treatment and supportive services to potential HUD–VASH program participants, if needed, prior to PHA issuance of rental vouchers; (4) providing housing search assistance to HUD–VASH participants with rental vouchers; (5) identifying the social service and medical needs of HUD–VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and (6) maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

As a condition of receiving HCV rental assistance, a HUD–VASH-eligible family must receive the case management services noted above from the VAMC or CBOC. Therefore, a HUD–VASH participant family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or CBOC. However, a VAMC or CBOC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such a case, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers, to free up the HUD–VASH voucher for another eligible family referred by the VAMC or CBOC. If the PHA has no voucher to offer, the family will retain its HUD–VASH voucher until such time as the PHA has an available voucher for the family. If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

i. Turnover of HUD–VASH Vouchers

In accordance with the appropriations acts cited herein, upon turnover, HUD–VASH vouchers must be issued to eligible families as identified by the VAMC or CBOC, as noted above.

j. Moving-to-Work (MTW) Agencies

HUD–VASH vouchers must be administered in accordance with this notice and are not eligible for fungibility under a PHA's MTW agreements. HUD–VASH vouchers must be reported on separately from vouchers under the agency's MTW Agreement.

k. Project-Based Assistance

Although HUD–VASH vouchers are tenant-based rental assistance, HUD will consider, on a case-by-case basis, requests from the PHA (with the support of the applicable Director of the VAMC or Veterans Integrated Service Network (VISN)) to project-base these vouchers in accordance with 24 CFR part 983. Public housing notices will be issued from time to time to address this issue.

l. Section Eight Management Assessment Program (SEMAP)

Since the leasing of HUD–VASH vouchers will be dependent on referrals from the VAMC or CBOC, the unit months and budget authority associated with these vouchers will not be included in the SEMAP leasing indicator. Therefore, 24 CFR 985.3(n)(1)(i) and (ii) are waived. However, utilization of these vouchers will be monitored separately through HUD systems.

m. Reallocation of HUD–VASH Vouchers

Under the appropriation acts cited herein, Congress has directed VA and HUD to allocate HUD–VASH vouchers based on geographical need for such assistance. In recognition that there may be changes and shifts in the population of homeless veterans over time, it may become necessary for HUD to reallocate HUD–VASH vouchers between PHAs regardless of the jurisdictional boundaries of the PHAs, in order to better address the current need of homeless veterans. In addition, HUD may reallocate vouchers due to poor performance by the PHA and/or the VAMC in serving this population, as evidenced by a lack of adequate referrals or inadequate voucher utilization rates after sufficient warning and cure time has been provided by HUD and/or the VA. Therefore, HUD–VASH vouchers may be reallocated among PHAs within the same state or between PHAs in different states based on the utilization of previously awarded HUD–VASH vouchers and current geographic need as determined by the VA and HUD.

n. HQS Initial Inspections

To expedite the leasing process, PHAs may pre-inspect available units that veterans may be interested in leasing, in order to maintain a pool of eligible units. If a HUD–VASH family selects a unit that passed a HQS inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (form HUD–52517), the unit may be approved, provided that it meets all other conditions under 24 CFR Section 982.305. However, the veteran must be free to select his/her unit and cannot be steered to these units.

III. Reporting Requirements

A new code (VASH) was established for use on line 2n of the Family Report (form HUD–50058), which indicates whether the family participates in ''other special programs.'' The information collection requested on HUD–50058 has been approved by the Office of Management and Budget (OMB) and given OMB control number 2577–0083. No person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. This code must remain on the HUD–50058 for the duration of the HUD–VASH family's participation in the program. In addition, PHA that administers the HUD–VASH voucher on behalf of the family (regardless of whether the PHA has received an allocation of HUD–VASH vouchers) must enter and maintain this code on the HUD–50058.

Data will also be captured in the Voucher Management System on monthly leasing and expenditures.

For any additional systems reporting requirements that may be established, HUD will provide further guidance.

Dated: March 16, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012–7081 Filed 3–22–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Trust Land Consolidation Draft Plan

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability, Comment Period Reopening.

SUMMARY: The Cobell Class Action Settlement Agreement established a trust land consolidation fund to be used for consolidating Indian trust and restricted lands and acquiring fractional interests in these lands. We are reopening the period for commenting on the Cobell Land Consolidation Program Draft Plan (also known as the Trust Land Consolidation Draft Plan), which is the draft plan for accomplishing these goals.

DATES: Submit comments by April 3, 2012.

ADDRESSES: Submit comments on the draft plan to: Elizabeth Appel, Bureau of Indian Affairs, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104; Email: *elizabeth.appel@bia.gov.* You can request copies of the draft plan by sending a letter or email to one of the above addresses or by calling 505–563–3805.

FOR FURTHER INFORMATION CONTACT: Kallie Hanley, Department of the Interior, 1849 C Street NW., Washington, DC 20240; Telephone 202–208–5397; Email: *kallie_hanley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: On February 3, 2012, we published a notice announcing the availability of the trust land consolidation draft plan (77 FR 5528) and requesting comments by March 19, 2012. This notice reopens the comment period; the new deadline for our receipt of comments on the draft plan to April 3, 2012.

Dated: March 19, 2012.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2012–7131 Filed 3–22–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD08000. L51010000. ER0000. LVRWB09B2660 CACA–49138]

Notice of Availability of the Draft Environmental Impact Statement/Draft Environmental Impact Report and the Draft California Desert Conservation Area Plan Amendment for the Calnev Pipe Line Expansion Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Land Policy and Management Act of 1976, as amended, and the California Environmental Quality Act, the Department of the Interior, Bureau of Land Management (BLM), together with the County of San Bernardino, has prepared an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) and Draft Resource Management Plan (RMP) Amendment for the Calnev Pipe Line Expansion Project in San Bernardino County, California and Clark County, Nevada, and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment and Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Calnev Pipeline Expansion Project by any of the following methods:

- Email: *BLM_CA_CalNev_EIS@blm.gov*
- Fax: 760–252–6099
- Mail: Attn: Rich Rotte, BLM Barstow Field Office, 2601 Barstow Road, Barstow California 92310

Copies of the Calnev Pipeline Expansion Project Draft EIS/EIR and Draft RMP Amendment are available in the Barstow Field Office at the above address and at the following locations:

- Victorville City Library, 15011Circle Drive, Victorville, California 92395
- Rialto Branch Library, 251 West 1st Street, Rialto, California 92376
- Las Vegas Library, 833 Las Vegas Blvd. N., Las Vegas, Nevada 80101

FOR FURTHER INFORMATION CONTACT: For further information, contact Rich Rotte, Realty Specialist, telephone 760–252–6026, address: Barstow Field Office, 2601 Barstow Road, Barstow, California 92311; email *BLM_CA_CalNev_EIS@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Calnev Pipe Line, LLC (Calnev) has submitted a right-of-way (ROW) application to the BLM to construct, operate, maintain, and decommission a petroleum pipeline known as the Calnev Pipeline Expansion Project in San Bernardino County, California and Clark County, Nevada. The proposed project site encompasses approximately 2,841 acres of land under multiple jurisdictions: Private, County, or Municipal—1,398 acres; California State Lands Commission—14 acres; Department of Defense—86 acres; San Bernardino National Forest—104 acres; BLM—1,329 acres. The project site is generally located adjacent to two existing Calnev pipelines except where it may deviate from those pipelines to avoid the Mojave National Preserve. The project will consist of approximately 235 miles of 16-inch diameter pipe (approximately half is on BLM lands), a new pump station near Baker, California, a 3-mile lateral pipeline from the Bracken junction to McCarran International Airport, and new or modified connections to new or modified laterals, valves, and ancillary facilities. Calnev is required to obtain a Revised Franchise Agreement from the County of San Bernardino.

The BLM and San Bernardino County are conducting a joint EIS/EIR for the Calnev Pipeline Expansion Project on BLM-managed land. The BLM's purpose and need for the Project is to respond to Calnev's application for a ROW grant. The BLM will decide whether to approve, approve with modification, or deny issuance of a ROW grant to Calnev for the proposed Calnev Pipeline Expansion Project. The BLM will analyze the following alternatives: Alternative 1 (the Proposed Action), Alternative 2 (Modified Route Alternative), Alternative 3 (the Agency-Preferred Alternative which avoids the Mojave National Preserve), and the No Project/No Action Alternative.

Since approval of any of the action alternatives would require amendment of the BLM's California Desert Conservation Area Plan, the plan amendment process will be integrated with the NEPA process as part of the EIS/EIR.

The BLM will use the NEPA process to satisfy the public involvement requirement for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) as provided in 36 CFR 800.2(d)(3). Native American Tribal consultations are being conducted in accordance with Section 106 of the NHPA, BLM, and Department of the Interior policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets.

The Draft EIS/EIR evaluates the potential impacts on air quality, biological resources, cultural resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources. A Notice of Intent to prepare an EIS/EIR for the Calnev Pipeline Expansion Project was published in the **Federal Register** (73 FR 13558) on Thursday, March 13, 2008. The BLM and San Bernardino County held five public scoping meetings: Rialto, California on April 1, April 30, and June 18, 2008; Victorville, California on April 2, 2008; and Las Vegas, Nevada on April 3, 2008. The formal scoping period ended on July 1, 2008. Issues and concerns raised during the scoping period involved impacts to visual resources, health and safety and natural resources.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2012–6921 Filed 3–22–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–12–L19100000–BJ0000–LRCMK1G04596]

Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plat of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the Winnebago Indian Reservation Boundary, the subdivisional lines and the subdivision of certain sections, and the survey of the subdivision of certain sections, Township 27 North, Range 9 East, Sixth Principal Meridian, Nebraska, Group No. 173, was accepted March 19, 2012.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: March 19, 2012.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2012–7013 Filed 3–22–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, representing the dependent resurvey and survey, in Township 17 North, Range 3 West, of the New Mexico Principal Meridian, accepted February 13, 2012, for Group 1129 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 26 North, Range 11 West, of the New Mexico Principal Meridian, accepted February 2, 2012, for Group 1112 NM.

The plat, in two sheets, representing the dependent resurvey and survey, in Township 16 North, Range 16 West, of the New Mexico Principal Meridian, accepted February 13, 2012, for Group 1111 NM.

Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 21 North, Range 7 East, of the Indian Meridian, accepted December 9, 2011, for Group 202 OK. The plat, in seven sheets, representing the dependent resurvey and survey in Township 13 North, Range 20 East, of the Indian Meridian, accepted December 14, 2011, for Group 67 OK.

The supplemental plat, representing the tribal acreage in Township 10 North, Range 24 East, of the Indian Meridian, accepted January 25, 2012, Supplemental OK. The plat, representing the dependent resurvey and survey in Township 25 North, Range 1 East, of the Indian Meridian, accepted February 27, 2012, for Group 213 OK.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *Marcella_Montoya@nm.blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

These plats are to be scheduled for official filing 30 days from the notice of

publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2012–7017 Filed 3–22–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000–L10200000–MJ0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Salmon, Idaho on April 24–25, 2012 for a two-day meeting at the Salmon Field Office, 1206 S. Challis, Salmon, Idaho. The first day will begin at 10:30 a.m. and adjourn at 4:30 p.m. The second day will begin early in the morning (estimated 4:30 or 5 a.m.) and adjourn around 12:30 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District, which covers eastern Idaho.

Items on the agenda will include an overview of the current issues, review and approval of past meeting minutes, public comment period, discussion of Sharkey Hot Springs Fee Increase, BLM National sage-grouse planning efforts, Salmon Field Office Southern Travel Management Plan (TMP) and a discussion of the historic restoration of the old Gilmore town site. Agenda items and location may change due to weather and other environmental circumstances. Following the presentations and overviews, tours will be conducted throughout the Salmon area to view sage-grouse leks, travel management areas and Sharkey Hot Springs.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: *sawheeler@blm.gov.*

Dated: March 12, 2012.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2012–7015 Filed 3–22–12; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[DN 2886]

Certain Food Waste Disposers and Components and Packaging Thereof: Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Food Waste Disposers and Components and Packaging Thereof,* DN 2886; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Emerson Electric Co. on March 16, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food waste disposers and components and packaging thereof. The complaint names as respondent Anaheim Manufacturing Co. of CA.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested

remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2886'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 19, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6997 Filed 3–22–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–827]

In the Matter of Certain Portable Communication Devices Commission Determination Not To Review an Initial Determination Amending the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) granting a joint motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–4737. 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 (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* 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 January 19, 2012, based on a complaint filed on behalf of Digitude Innovations LLC of Alexandria, Virginia (''Digitude'') on December 2, 2011 and amended on December 16, 2011. 77 FR 2758 (Jan. 19, 2012). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation of certain portable communication devices by reason of infringement of one or more of claims 7–13 and 15 of U.S. Patent No. 5,926,636; claims 1–9 and 17–25 of U.S. Patent No. 5,929,655; claims 1–8 and 14–20 of U.S. Patent No. 6,208,879; and claims 1–5 of U.S. Patent No. 6,456,841. The Commission's notice of investigation named as respondents Research In Motion Ltd. of Ontario, Canada; Research In Motion Corp. of Irving, Texas; HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; LG Electronics, Inc. of Seoul, South Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; LG Electronics MobileComm U.S.A, Inc. of San Diego, California; Motorola Mobility Holdings, Inc. of Libertyville, Illinois; Samsung Electronics Co., Ltd of Seoul, South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Telecommunications America, LLC of Richardson, Texas; Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; Sony Electronics, Inc. of San Diego, California; Sony Ericsson Mobile Communications AB of Lund, Sweden; Sony Ericsson Mobile Communications (USA) Inc. of Research Triangle Park, North Carolina; Amazon.com, Inc. of Seattle, Washington; Nokia Corporation of Espoo, Finland; Nokia Inc. of Irving, Texas; Pantech & Curitel Communication, Inc. of Seoul, South Korea; and Pantech Wireless, Inc. of Atlanta, Georgia.

On January 26, 2012, Digitude and respondent Motorola Mobility Holdings, Inc. filed a joint motion to amend the complaint and notice of investigation to substitute Motorola Mobility, Inc. for Motorola Mobility Holdings, Inc. On February 22, 2012, the Commission investigative attorney filed a response in support of the motion. On February 27, 2012, the presiding administrative law judge issued the subject ID, granting the motion. No petitions for review were filed.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 19, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–6998 Filed 3–22–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cellco Partnership D/B/A Verizon Wireless, Comcast Cable Communications, LCC, Time Warner Cable LLC, and Bright House Networks, LLC

Notice is hereby given that, on February 24, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cellco Partnership d/b/a Verizon Wireless, Comcast Cable Communications, LLC, Time Warner Cable LLC, and Bright House Networks, LLC (''Cellco'', ''Comcast'', ''Time Warner'', and ''Bright House'') have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Cellco Partnership d/b/a Verizon Wireless, Basking Ridge, NJ; Comcast Cable Communications, LLC, Philadelphia, PA; Time Warner Cable LLC, New York, NY; and Bright House Networks, LLC, Syracuse, NY. The general area of Cellco, Comcast, Time Warner, and Bright House's planned activity is the research and development of technology and intellectual property relating to enhanced integration of wireline and wireless products, services, and devices.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–7072 Filed 3–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on February 17, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Climate and Energy Project (''GCEP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objective. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, E.I. du Pont de Nemours and Company, Wilmington, DE, has been added as a party to this venture. The change in its nature and objectives is that the members of GCEP have amended the agreement between them to extend the termination of GCEP, which currently will terminate August 31, 2014.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GCEP intends to file additional written notifications disclosing all changes in membership.

On March 12, 2003, GCEP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2003 (68 FR 16552).

The last notification was filed with the Department on April 8, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 1, 2011 (76 FR 31638).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–7077 Filed 3–22–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Development of a Core Correctional Practices Curriculum

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a nine-month project period for the development of a competency-based and performance-driven curriculum that will provide corrections professionals with the knowledge and skills to facilitate effective changes in individual offender's behavior. The curriculum will be on two levels: (1) Training line staff who work with offenders under correctional supervision and (2) training those who train line staff who work with offenders.

DATES: Applications must be received by 4 p.m. EST on Monday, April 9, 2012.

ADDRESSES: Applicants are encouraged to submit their proposals electronically via *http://www.grants.gov*. Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. If submitted in hard copy, there must be an original and three unbound copies of the full proposal. The original should have the applicant's signature in blue ink. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Faxed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *www.nicic.gov*. All technical or programmatic questions concerning this announcement should be directed to Bernie Iszler, Correctional Program Specialist, National Institute of Corrections. She can be reached by calling 303–338–6618 or by email at *biszler@bop.gov*. All questions, answers, and additional information related to this solicitation will be linked to its announcement on the NIC Web site at *http://nicic.gov/cooperativeagreements* during the time this solicitation remains open.

Related Solicitation: NIC is issuing two separate, but closely related solicitations in March 2012: This one and a second one titled ''Curriculum Development for MET, ECCP, and ICMS Training Project''. Two separate awards will be made through these two solicitations. Applicants may submit proposals under both of these solicitations, but the two awards will be made independently of one another and each project will be managed separately.

SUPPLEMENTARY INFORMATION:

Background

For many years, NIC has been committed to promoting risk reduction through the use of evidence-based policies and practices. More specifically, for corrections line staff, NIC has developed and supported Thinking for a Change, a synthesized cognitive behavioral offender group intervention (see *http://nicic.gov/Library/025057*); created several iterations of training on interpersonal communications skills (see *http://*

nicic.gov/Training/NICWBT18 and *http://nicic.gov/Library/020035*); and supported the dissemination of information on motivational interviewing (see *http://nicic.gov/MotivationalInterviewing*).

In addition, recent work in training probation officers on how to combine the risk-need-responsivity model of offender rehabilitation with ''techniques of influence'' (structured skills, intervention techniques, and behaviors) has resulted in positive outcomes for individual interventions with offenders (see *http://www.publicsafety.gc.ca/res/cor/rep/_fl/2010-01-rnr-eng.pdf*).

Several curricula for individual offender interventions have been developed that use combinations of cognitive-behavioral techniques, motivational interviewing, cognitive restructuring, relationship building, and role clarification. These include the Strategic Training Initiative in Community Supervision (STICS) by Public Safety Canada; Effective Practices in Community Supervision (EPICS) by the University of Cincinnati Corrections Institute; Strategic Techniques Aimed at Reducing Rearrest (STARR) by the Administrative Office of the United States Courts, Office of Probation and Pretrial Services; Effective Practices in Correctional Settings II (EPICS II) by Christopher T. Lowenkamp, Charles R. Robinson, & Melanie S. Lowenkamp; and Working with Involuntary Clients by Chris Trotter. Because each of these intervention tools have been created for frontline corrections staff to use in affecting offender change, NIC sees the current environment as a moment of opportunity to create a curriculum for an individual intervention strategy that uses adult learning research (see NIC ITIP Toolkit *http://nicic.gov/Library/024773*) and leverages a blend of delivery platforms (synchronous, asynchronous, and classroom) to teach corrections professionals how to train, implement, and coach frontline staff in effective core correctional practices.

Scope of Work: Tasks to be performed under this cooperative agreement include the following:

(1) The creation of two curricula: one that will be training for staff and a second one that will be training for trainers. Both curricula will have two levels. The level 1 curriculum will be for case managers, probation officers, parole officers, and other corrections staff who have case management time with offenders. The level 2 curriculum will be for corrections officers, line staff, and others who interact with offenders regularly but do not have case management duties. In effect, level 2 will be for corrections staff who directly supervise offenders. The curriculum will be based on the Effective Practices in Correctional Settings II (EPICS–II) by Christopher T. Lowenkamp, Charles R. Robinson, & Melanie S. Lowenkamp and Strategic Techniques Aimed at Reducing Rearrest (STARR) by the Administrative Office of the US Courts, Office of Probation and Pretrial Services (permission has been obtained for use of the curricula), and ''Interpersonal Communications in the Correctional Setting: IPC'' by the National Institute of Corrections (NIC accession #020035).

The curriculum developed by the awardee should allow for the use of blended elements, including classroom or individual instruction, e-courses, and virtual instructor-led training as well as coaching/feedback. A blended process could include the following elements: (A) Agency and facilitator/trainer/coach readiness survey: virtual instructor-led training (VILT), and a WebEx. (B) Orientation: VILT, expectations, outline, and an agency plan (practices, recordings, job coaching, job aids). (C) Background information: e-course, theory, history, and research (adult learning and evidence-based practices). (D) Model-skill steps: recorded sessions, Participant workbook, and a blog/forum discussion. (E) Guided practice with scenarios: VILT and a question guide. (F) Demos/tryouts: instructor-led training where size of groups could vary, and coaching of agency trainers/coaches.

(2) The creation of a Core Correctional Practices Training for Trainers curriculum.

(3) The delivery of the CCP training and CCP training for trainers to a pilot site to be identified by NIC, evaluation of the pilot training, and revisions to curricula after pilot site delivery.

(4) Participation in organizational planning meetings with NIC staff and subject matter experts. Awardee expenses for these meetings are limited to the awardee's own project team's costs of travel, lodging and meals, incidental expenses, and compensation. Awardees should plan on at least one 2-day meeting to take place at the NIC National Corrections Academy in Aurora, Colorado. Participation in other planning and coordination meetings will take place as necessary throughout the life of the project through teleconferences and WebEx meetings.

(5) The delivery of a full report on the project together with all the materials developed during the project and in a design and format appropriate for public dissemination. A draft of these materials must be submitted prior to the end of the project and follow NIC's requirements for documents or other media.

Specific Requirements: Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's writer/editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements*.

All final documents and other media submitted for posting on the NIC Web site must meet the federal government's requirement for accessibility (508 PDF or HTML file). The awardee must provide descriptive text interpreting all graphics, photos, graphs, and/or multimedia to be included with or distributed alongside the materials and must provide transcripts for all applicable audio/visual works.

Application Requirements: Applications should be concisely written, typed double spaced and reference the project by the ''NIC Opportunity Number'' and title in this announcement. The package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative not to exceed 30 pages in response to the statement of work; and a budget narrative explaining projected costs. Applicants may submit a description of the project team's qualifications and expertise relevant to the project but should not attach lengthy resumes. Large attachments to the proposal describing the organization are discouraged.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements available at *http://nicic.gov/Downloads/General/certif-frm.pdf*. Failure to supply all

required forms with the application package will result in disqualification of the application from consideration.

Authority: Public Law 93–415

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funding is set at $64,000.00. Funds may be used only for the activities that are linked to the desired outcome of the project.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Review Considerations

Applications received under this announcement will be subject to the NIC review process. Proposals that fail to provide sufficient information to have them evaluated under the criteria below may be judged non-responsive and disqualified. The criteria for the evaluation of each application will be as follows:

Progammatic (40%)

Are all of the five project tasks adequately discussed? Is there a clear statement of how each task will be accomplished, including major sub-tasks, the strategies to be employed, required staffing, and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational (35%)

Does the proposed project staff possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work? Does the applicant organization, group, or individual have the organizational capacity to achieve all five project tasks? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the project time frame?

Project Management/Administration (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If the applicant proposes consultants and/or partnerships, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 12AC05. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2012–7016 Filed 3–22–12; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; The 13 Carcinogens Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''The 13 Carcinogens Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before April 23, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the 13 Carcinogens Standard and its information collection requirements is to provide protection for workers from the adverse effects associated with the occupational exposure to the following carcinogens: 4-Nitrobiphenyl, alpha-Naphthylamine, methyl chloromethyl ether, 3,3-Dichlorobenzidine (and its salts), bis-chloromethyl ether, beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, Ethyleneimine, beta-Propiolactone, 2-Acetylaminofluorene, 4-Dimethylaminoazo-benzene, and N-Nitrosodimethylamine. To comply with the Standard, covered employers must establish and implement a medical surveillance program for workers assigned to enter regulated areas, inform workers of their medical examination results, and provide workers with access to their medical records. Further, employers must retain worker medical records for specified time periods and make them available upon request to the OSHA and National Institute for Occupational Safety and Health.

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 if it does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0085. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

For additional information, see the related notice published in the **Federal Register** on December 8, 2011 (76 FR 76768).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0085. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: The 13 Carcinogens Standard.

OMB Control Number: 1218–0085.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 95.

Total Estimated Number of Responses: 2,162.

Total Estimated Annual Burden Hours: 1,472.

Total Estimated Annual Other Costs Burden: $99,207.

Dated: March 19, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–7042 Filed 3–22–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for Serving Adult and Youth Ex-Offenders Through Strategies Targeted to Characteristics Common to Female Ex-Offenders

Funding Opportunity Number: SGA/DFA PY–11–12

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA), announces the availability of approximately $12 million in grant funds authorized by the Workforce Investment Act (WIA) to award approximately eight grants to serve adult and youth ex-offenders pre- and post-release. Services to be funded will be targeted to female ex-offenders, but must also be open to eligible male ex-offenders. Applicants may submit only one proposal for up to $1.5 million, with the amount requested depending on the number of participants to be served. These grants will be selected through a competitive process open to any non-profit organization with IRS 501(c)(3) status, unit of state or local government, or any Indian and Native American entity eligible for grants under WIA Section 166. These grants will cover a 30-month period of performance that includes up to six months of planning and a minimum of 24 months of operations. The 24 month period for operations must include time to allow each participant to complete the program and have between 3–4 months of follow-up. Thus, the last cohort of participants must complete program services 3 to 4 months before the end of the grant. Grantees may provide follow-up services to some participants while providing direct services to others.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Mamie Williams, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3341.

The Grant Officer for this SGA is Latifa Jeter.

Signed March 19, 2012 in Washington, D.C.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–6932 Filed 3–22–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Independent Contractor Registration and Identification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal and state agencies with an opportunity to comment on proposed and 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, that reporting (time and financial resources) is minimal, that collection instruments are clearly understood, and that the impact of collection requirements can be properly assessed.

The Mine Safety and Health Administration is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–00040, Independent Contractor Register. OMB last approved this information collection request (ICR) on March 10, 2009.

DATES: Submit comments on or before May 22, 2012.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–0040'' and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0040'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100

Wilson Boulevard Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Independent contractors (contractors) perform services or construction at a mine. They may be engaged in virtually every type of work performed at a mine, including activities such as clearing land, excavating ore, processing minerals, maintaining, or repairing equipment, or constructing new buildings or new facilities, such as shafts, hoists, conveyors, or kilns. Independent contractors vary in size, the type of work performed, and the time spent working at mine sites. Some contractors work exclusively at mining operations, others may work a single contract at a mine and never return to MSHA jurisdiction.

The work contractors perform can pose serious dangers to employees. From January 1, 2001 through June 30, 2011, 623 miners have been fatally injured in mining accidents; 143 of those (or about 23%) worked for independent contractors. MSHA uses the contractor information during inspections to determine the responsibility for compliance with safety and health standards and to facilitate the service of documents.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to independent contractors. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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, to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The public comment version of the supporting statement will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request. MSHA does not intend to publish the results from this information collection and is not seeking approval to either display or not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 45/MSHA Form 7000–52.

Total Number of Respondents: 15,609.

Frequency: Various.

Total Number of Responses: 100,651.

Estimated Total Burden Hours: 8,188 hours.

Estimated Total Burden Cost: $545.

Comments submitted in response to this notice will be summarized and 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.

Authority: 44 U.S.C. 3506(c)(2)(A).

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–6988 Filed 3–22–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Diesel-Powered Equipment for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure 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.

The Mine Safety and Health Administration is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–0119, Diesel-Powered Equipment in Underground Coal Mines. OMB last approved this information collection request (ICR) on March 31, 2009.

DATES: Submit comments on or before May 22, 2012.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–0119'' and sent to both the Office

of Management and Budget (OMB) and MSHA. Comments to MSHA may be sent by any of the methods listed below.

• *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Facsimile:* 202–693–9441, include ''OMB 1219–0119'' in the subject line of the message.

• *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration (MSHA) requires mine operators to provide important safety protections to underground coal miners who work in mines that use diesel-powered equipment. Diesel equipment can pose a fire and explosion hazard in the confined environment of an underground coal mine where combustible coal dust and explosive methane gas are present.

This information collection request (ICR) was last approved on March 31, 2009 when it was titled ''Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel Powered Equipment in Underground Coal Mines''. The ICR title has been shortened to ''Diesel-Powered Equipment in Underground Coal Mines'' to focus on the central subject of the ICR and to make reference to the ICR simpler.

The following provisions are addressed by the ICR:

§ 75.1901(a)—Diesel fuel requirements;

§ 75.1904(b)(4)(i)—Underground diesel fuel tanks and safety cans;

§ 75.1906(d)—Transport of diesel fuel;

§ 75.1911(i) and (j)—Fire suppression systems for diesel-powered equipment and fuel transportation units;

§ 75.1912(h) and (i)—Fire suppression systems for permanent underground diesel fuel storage facilities;

§ 75.1914(f)(1) and (2);(g)(5); (h)(1) and (2)—Maintenance of diesel powered equipment;

§ 75.1915(a); (b)(5); (c)(1) and ((2)—Training and qualification of persons working on diesel-powered equipment.

MSHA requires mine operators to provide important safety protections to underground coal miners who work in mines that use diesel-powered equipment. Diesel equipment can pose a fire and explosion hazard in the confined environment of an underground coal mine where combustible coal dust and explosive methane gas are present.

This information collection addresses the recordkeeping associated with maintenance of diesel-powered equipment; testing and maintenance of fire suppression systems on the equipment and at fueling stations; exhaust gas sampling provisions to protect miners' safety. Records document conditions encountered during: Testing and maintenance of diesel equipment; corrective actions taken; and that the persons performing the maintenance, repairs, examinations, and tests are trained and qualified to do so.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed extension of the information collection related to Diesel-Powered Equipment in Underground Coal Mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Address 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, to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with this safety standard. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Diesel-Powered Equipment for Underground Coal Mines.

OMB Number: 1219–0119.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 75.

Total Respondents: 223.

Frequency: Various.

Total Responses: 169,003.

Estimated Total Burden Hours: 14,364 hours.

Estimated Total Burden Cost: $457,808.

Comments submitted in response to this notice will be summarized and 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.

Authority: 44 U.S.C. 3506(c)(2)(A).

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–6989 Filed 3–22–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 23, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Health and Human Services, Immediate Office of the National Coordinator for Health Information Technology (DAA–0468–2011–0007, 4 items, 2 temporary items). Records include administrative files and draft correspondence files. Proposed for permanent retention are official correspondence files and schedules of daily activity files for the National Coordinator.

2. Department of Justice, Civil Rights Division (DAA–0060–2011–0025, 1 item, 1 temporary item). Master files of an electronic information system which tracks the deadlines for sending mail at various points or times during Office of Special Counsel cases.

3. Department of Justice, Federal Bureau of Investigation (N1–65–11–24, 1 item, 1 temporary item). Master files of an electronic information system used for tracking Equal Employment Opportunity complaints.

4. Department of Justice, Office of Community Oriented Policing Services (DAA–0060–2011–0001, 1 item, 1 temporary item). Master files of an electronic information system which tracks progress reports from grant recipients.

5. Department of Labor, Employment and Training Administration. (N1–369–11–1, 8 items, 5 temporary items). System of records documenting employers seeking to hire foreign nationals. Includes application file case files, web access files, and master data files. Proposed for permanent retention are master data files containing data on labor certificate applications.

6. Department of Transportation, Federal Railroad Administration (N1–399–10–3, 5 items, 5 temporary items). Master files of an electronic information system used to manage and provide backup for content uploaded to the agency Web site. Also included is the agency Web site and internal intranet, which contains copies of reports, general agency information, press releases, project collaboration documents, Web site visitor information, and administrative forms and issuances.

7. Department of the Treasury, Internal Revenue Service (N1–58–11–14, 1 item, 1 temporary item). Records consist of case files used to issue retirement plan compliance statements.

8. Department of the Treasury, Internal Revenue Service (N1–58–11–16, 1 item, 1 temporary item). Records consist of forms filed by lenders on each mortgage credit certificate issued and are used to obtain taxpayer information.

9. Department of the Treasury, Internal Revenue Service (N1–58–11–21 1 item, 1 temporary item). Records consist of a form used by internal divisions as documentation of agreements relating to criminal investigations and collections activities.

10. Department of Veterans Affairs, Veteran Health Administration (N1–15–11–4, 5 items, 4 temporary items). Records related to the establishment, development, execution, and completion of educational projects, programs, and activities for clinics working with the Department's health care system. Proposed for permanent retention are historically significant media files.

Dated: March 19, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–7000 Filed 3–22–12; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities

ACTION: Cancellation of Panel Meeting.

Notice is hereby given of the cancellation of the following meeting of the Humanities Panel at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506, which was published in the **Federal Register** on March 13, 2012, 77 FR 14836.

DATES: April 23, 2012.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for The Summer Seminars and Institutes grant program, submitted to the Division of Education Programs, at the March 1, 2012 deadline.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2012–6985 Filed 3–22–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences

Correction

The National Science Foundation published a Notice of Meeting in the **Federal Register** on March 19, 2012. The notice was published on page 16076, column 3. The notice incorrectly states that the meeting is on April 7–8, 2012.

This notice announces the corrected date and time of the meeting. The correct meeting information is as follows:

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (66).

Date/Time: April 5, 2012, 9 a.m.–6 p.m., April 6, 2012, 9 a.m.–3 p.m.

Place: National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Update on current status of Directorate, Report of MPS Committee of Visitors, Report of NSF Advisory Subcommittees, Meeting of MPSAC with Divisions within MPS Directorate, Discussion of MPS Long-term Planning Activities.

Summary Minutes: May be obtained from the contact person listed above.

Dated: March 20, 2012.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2012–7040 Filed 3–22–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2012–0002].

DATE: Week of March 26, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of March 26, 2012

Tuesday, March 27, 2012

8:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), Appeal of LBP–11–13 (Apr. 26, 2011), Docket No. 50–346–LR (Tentative).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 20, 2012.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–7177 Filed 3–21–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66617; File No. SR–ISE–2012–20]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Order Type

March 19, 2012.

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 March 7, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 715 (Types of Orders) to adopt a new order type. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide an additional order type that will give market participants greater control over the circumstances in which their orders are executed.

Some investors and market participants wish only to provide liquidity in certain circumstances, such as to receive a maker fee (rebate) upon execution of an order. To accommodate this strategy, the Exchange proposed to adopt a new order type called an add liquidity order (''ALO''). ALOs are limit orders that will only be executed as a ''maker'' on the ISE. Members can choose whether an ALO that is executable on the ISE upon entry (or that locks or crosses an away market upon entry) will be cancelled or re-priced to one minimum price variation above the national best bid or below the national best offer. An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price. While the Exchange expects to implement this new order type on May 14, 2012, this date is not certain and the Exchange will announce the specific operative date via an Information Circular.

This order type is similar to order types available on NYSE Arca.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the ALO order is designed to provide market participants with the ability to provide liquidity and have more control over their execution costs. When an ALO would lock or cross an away market price if placed on the ISE limit order book or be executed upon entry, it will either be cancelled or re-priced as designated. In addition, the ALO is designed to assure compliance with the Intermarket Linkage rules related to locked and crossed markets.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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) [7] of the Act and Rule 19b–4(f)(6) [8] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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 Exchange 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca offers a Liquidity Adding Order that is canceled if executable upon entry and a PNP Plus order that is re-priced if it is marketable upon entry, or would lock or cross an away market. *See* NYSE Arca Rule 6.62(t) and (y). *See also,* Securities Exchange Act Release Nos. 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (SR–NYSEArca–2009–21) (Notice of immediate effectiveness of the Liquidity Adding Order) and 49942 (June 29, 2004), 69 FR 41005 (July 7, 2004) (SR–PCX–2004–12) (Order approving the PNP Plus order).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] Under the Options Order Protection and Locked/Crossed Market Plan (''Plan'') Members are required to reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a Protect [sic] Quotation. The Plan is a national market system plan that was approved by the Commission and by which all options exchanges must comply. *See* Securities Exchange Act Release Nos. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (order approving the Plan); 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009) (order approving ISE Rules implementing the Plan).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

Number SR–ISE–2012–20 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–20. 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 a.m. and 3 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–ISE–2012–20 and should be submitted on or before April 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6987 Filed 3–22–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7830]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ecstatic Alphabets/Heaps of Language''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ecstatic Alphabets/Heaps of Language,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about May 6, 2012, until on or about August 27, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 15, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–7044 Filed 3–22–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting: Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This Notice is a correction to a document published by the same title on March 7, 2012 (FR Doc. 2012–5923), page 13683. In that document the **SUPPLEMENTARY INFORMATION** was inadvertently left out. This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet April 24, 2012 from 8:30 a.m. to 5 p.m. The Charting Group will meet April 25 and 26, 2012 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by Innovative Solutions International, a Pragmatics, Inc. Company at 1761 Business Center Drive, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, National Aeronautical Navigation Products (AeroNav Products), Quality Assurance & Regulatory Support, AJV–3B, 1305 East-West Highway, SSMC4, Station 4640, Silver Spring, MD 20910; telephone: (301) 427–5155, fax: (301) 427–5412.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from April 24 through April 26, 2012, from 8:30 a.m. to 5 p.m. at Innovative Solutions International (ISI), a Pragmatics Inc. Company, at their offices at 1761 Business Center Drive, Reston, VA 20190.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic

control initiatives. Attendance is open to the interested public, but will be limited to the space available.

Please note the following special security requirements for access to the Pragmatics, Inc. Corporation Headquarters. A picture I.D. is required of all US citizens. All foreign national participants are required to have a passport. Additionally, not later than April 10, 2012, foreign national attendees must provide their name, country of citizenship, company/organization representing, and country of the company/organization. Send the information to: John Banks, Innovative Solutions International, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK, or via Email (preferred) to: *john.ctr.banks@faa.gov.* Foreign nationals who do not provide the required information will not be allowed entrance—NO EXCEPTIONS.

The public must make arrangements by April 6, 2012, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION** section not later than April 6, 2012. Public statements will only be considered if time permits.

Issued in Washington, DC, on March 19, 2012.

Valerie S. Watson,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2012–7058 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0078]

Commercial Driver's License (CDL) Standards; Rotel North American Tours, LLC; Application for Renewal of Exemption; Correction

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

ACTION: Notice; correction.

SUMMARY: FMCSA corrects two notices published in the **Federal Register** on January 31, 2012, and June 14, 2010. In each instance, FMCSA announced in error that 22 named drivers being renewed for an exemption were employed by Rotel North American Tours, LLC. This notice corrects the error and provides the correct name of the employer for these drivers, Rotel Tours of Germany.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION: FMCSA published a notice and request for comments in the **Federal Register** on January 31, 2012 (77 FR 4881), and June 14, 2010 (75 FR 33661), announcing that Rotel North American Tours, LLC (Rotel) had applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel, possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States. The 22 drivers named are actually employed by Rotel Tours of Germany (currently, Rotel Tours, Das Rollende Hotel, through Georg Hoeltl GmBh & Co.Kg, Tittling, or George Hoeltl GmbH, Tittling), of which Rotel North American Tours, LLC, is an affiliate and not the employer. The driver-employees of Rotel Tours of Germany are utilized by Rotel North American Tours, LLC, which conducts international tours.

For FMCSA's notice of application for renewal of exemption published on January 31, 2012 (77 FR 4881), the following correction is made:

On page 4881, in the third column, *Summary section,* we correct the first sentence ''FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States,'' to read ''FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel Tours of Germany (currently, Rotel Tours, Das Rollende Hotel, through Georg Hoeltl GmBh & Co.Kg, Tittling, or George Hoeltl GmbH, Tittling) and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States.''

For FMCSA's notice of application for renewal of exemption published on June 14, 2010 (FR 75 33661), the following correction is made:

On page 33661, in the first column, *Summary section,* we correct the first sentence ''FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States,'' to read ''FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel Tours of Germany (currently, Rotel Tours, Das Rollende Hotel, through Georg Hoeltl GmBh & Co.Kg, Tittling, or George Hoeltl GmbH, Tittling) and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States.''

Issued on: March 13, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7123 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0086]

Identification of Interstate Motor Vehicles: City of Chicago, IL Registration Emblem Requirement; Petition for Determination

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

ACTION: Notice of Petition for Determination; Request for Comments.

SUMMARY: FMCSA invites all interested persons to comment on a petition submitted by Allerton Charter Coach, Inc. (Allerton) requesting a determination that the Commercial Motor Vehicle (CMV) identification requirement imposed by the Chicago Ground Transportation Tax is preempted by Federal law. Federal law prohibits States and their political subdivisions from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation, with certain exceptions. FMCSA seeks comment on whether the credential display requirement described below is preempted or whether it qualifies for an exception.

DATES: Comments are due on or before May 22, 2012.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective

public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''Help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this Notice are in this docket. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–7056; email *Genevieve.Sapir@dot.gov.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On January 20, Allerton submitted a petition requesting that FMCSA determine that the Chicago Ground Transportation Tax's (the Tax) registration emblem display requirement, which applies to interstate passenger motor carriers under FMCSA's jurisdiction, is preempted by 49 U.S.C. 14506. On February 9, the City of Chicago responded to the petition, stating that it would file public comments in response to this Notice.

The Tax requires providers of passenger ground transportation within the City of Chicago to register their vehicles and pay a graduated fee that varies according to the seating capacity of each vehicle registered. Chicago Mun. Code ch. 3–46. The Tax applies to all for-hire vehicles used to pick up, drop off or both pick up and drop off passengers within the city. Chicago Mun. Code § 3–46–020(H). These vehicles include, but are not limited to: Water taxis, horse-drawn carriages and taxicabs, and all automobiles, limousines, buses and other vehicles used to provide passenger transportation for a charge. Chicago Mun. Code § 3–46–020(D). The Tax applies regardless of whether the vehicle in question is registered or titled with the State of Illinois. *Id.* To prevent multiple taxation, most providers of for-hire passenger transportation who are required to pay a similar tax in another municipality may claim a credit by the amount paid to the other municipality. Chicago Mun. Code § 3–46–030(C)(1).

Vehicles subject to the Tax must display an emblem on the windshield as evidence of registration and payment. Chicago Mun. Code § 3–46–073(A), (B). Vehicles that do not display the emblem are prohibited from operating within the city and are subject to seizure and impoundment at the vehicle owner's expense, as well as an administrative penalty of $500. *Id.;* Chicago Mun. Code § 3–46–076(A).

Federal law, codified at 49 U.S.C. 14506(a), prohibits States from requiring interstate motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation (Secretary). Section 14506(b), however, establishes the following exceptions to this prohibition [all statutory references are to title 49, United States Code]:

> (b) Exception.—Notwithstanding subsection (a), a State may continue to require display of credentials that are required—
>
> (1) Under the International Registration Plan under section 31704;
>
> (2) Under the International Fuel Tax Agreement under section 31705 or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement;
>
> (3) Under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate;
>
> (4) In connection with Federal requirements for hazardous materials transportation under section 5103; or
>
> (5) In connection with the Federal vehicle inspection standards under section 31136.

FMCSA interprets § 14506(b)(3) to establish two categories of excepted requirements. The first includes identification requirements related to motor vehicle license plates. The second includes any other identification displays that the Secretary of Transportation approves. 49 U.S.C. 14506(b)(3). In addition, in accordance with a previous decision, FMCSA interprets all of the exceptions at § 14506(b) to apply to political subdivisions of States, including municipalities. *See Identification of Interstate Motor Vehicles: New York City, Cook County, and New Jersey Identification Requirements; Petition for Determination* (75 FR 64779, Oct. 20, 2010). All authority granted to the Secretary under § 14506 has been delegated to the FMCSA Administrator by 49 CFR 1.73(a)(7).

Request for comments

FMCSA seeks comment on whether the City of Chicago's registration emblem display requirement is preempted by Federal law. FMCSA welcomes comments on whether any exception set forth in 49 U.S.C. 14506(b) applies to the Tax, however the Agency believes that § 14506(b)(3) is the only exception that could apply to the Tax. As such, the Agency specifically seeks comment on whether there is any reason FMCSA should consider approving the requirement under § 14506(b)(3).

The Agency requests that submissions be limited to these issues and encourages commenters to submit data or legal authorities supporting their positions. FMCSA has no authority to review the imposition, amounts, or collection of any taxes for which the credentials are issued. Allerton's

petition and the City of Chicago's response are available for inspection in the docket established for this Notice.

Issued on: March 20, 2012.

William A. Bronrott,

Deputy Administrator.

[FR Doc. 2012–7124 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2005–22194; MCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2009–0303; FMCSA–2009–0321]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 14, 2012. Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2009–0303; FMCSA–2009–0321, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 28 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 28 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Bradley T. Alspach (IL)
Scott E. Ames (ME)
Otto J. Ammer, Jr. (PA)
Nick D. Bacon (KY)
Mark A. Baisden (OH)
Johnny W. Bradford, Sr. (KY)
Levi A. Brown (MT)
Charlie F. Cook (GA)
Curtis J. Crowston (ND)
Clifford H. Dovel (WA)
Arthur L. Fields (SC)
Rupert G. Gilmore, III (AL)
Albert Gschwind (WI)
Walter R. Hardiman (WV)
Michael W. Jones (IL)
Matthew J. Konecki (MT)
Paul E. Lindon (KY)
Travis J. Luce (MI)
Jack D. Miller (OH)
Eric M. Moats, Sr. (MD)
Robert W. Nicks (NY)
Joseph S. Nix, IV (MO)
Monte L. Purciful (IN)
Luis F. Saavedra (FL)
Earl W. Sheets (OH)
Robert V. Sloan (NC)
Steven L. Valley (ME)
Darel G. Wagner (MN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded

if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 28 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 66 FR 66969; 67 FR 10475; 67 FR 17102; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 74699; 68 FR 75715; 69 FR 8260; 69 FR 10503; 69 FR 17267; 70 FR 57353; 70 FR 61165; 70 FR 72689; 71 FR 4194; 71 FR 5105; 71 FR 6824; 71 FR 6825; 71 FR 6826; 71 FR 13450; 71 FR 16410; 71 FR 19600; 71 FR 19602; 73 FR 8392; 73 FR 11989; 74 FR 60022; 75 FR 1835; 75 FR 462375 FR 9482; 75 FR 13653). Each of these 28 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 23, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 28 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 9, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7121 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27897; FMCSA–2009–0011]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 27, 2012. Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2007–27897; FMCSA–2009–0011, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in

the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 14 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 14 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dwight A. Bennett (MD)
Chad L. Burnham (ME)
Loren D. Chapman (MN)
David A. Christenson (NV)
Charles R. Everett (TN)
Charles D. Grady (GA)
Paul K. Leger (NH)
Robert L. Postell (GA)
Martin L. Reyes (IL)
Gerald L. Rush, Jr. (NJ)
Gary F. Segur (MI)
Alan T. Watterson (MA)
David E. Williford (NC)
Larry Winkler (MO)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 14 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (72 FR 39879; 72 FR 52419; 75 FR 8184; 75 FR 9480; 75 FR 22176). Each of these 14 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 23, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 14 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7129 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0380]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from twelve individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce

without meeting the Federal vision requirement.

DATES: Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0380 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The twelve individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Robert J. Ambrose

Mr. Ambrose, age 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in right eye is 20/15 and in his left eye, 20/60. Following an examination in 2011, his ophthalmologist noted, ''It is my opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ambrose reported that he has driven straight trucks for 3 years, accumulating 60,000 miles. He holds a Class A Commercial Driver's License (CDL) from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

Clifford W. Doran, Jr.

Mr. Doran, 51, has had a macular scar in his left eye due to a traumatic injury sustained in 2003. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2011, his ophthalmologist noted, ''I see no contraindications to him operating a commercial motor vehicle safely.'' Mr. Doran reported that he has driven straight trucks for 1 year, accumulating 12,000 miles and tractor-trailer combinations for 19 years accumulating 3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott T. Green

Mr. Green, 31, has had amblyopia in his left eye since birth. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, ''It is my opinion that his visual condition is stable and that he has sufficient visual function to perform the driving tasks required to operate a commercial vehicle.'' Mr. Green reported that he has driven straight trucks for 6 years, accumulating 37,500 miles. He holds a Class C operator's license from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark J. Meacham

Mr. Meacham, 49, has a prosthetic left eye due to a traumatic injury sustained 20 years ago. The best corrected visual acuity in right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, you have sufficient vision in the right eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Meacham reported that he has driven straight trucks for 15 years, accumulating 2.25 million miles. He holds a Class C operator's license from North Carolina. His driving record for the last 3 years shows one crash, which he was not cited for, and one conviction for speeding in a CMV; he exceeded the speed limit by 9 mph.

Ronnie D. Owens

Mr. Owens, 63, has a prosthetic right eye due to a traumatic injury sustained at age 23. The best corrected visual acuity in left eye is 20/20. Following an examination in 2011, his optometrist noted, ''In my professional opinion, Mr. Owens has sufficient vision to operate a commercial vehicle.'' Mr. Owens reported that he has driven straight trucks for 47 years, accumulating 2.9 million miles and tractor-trailer combinations for 42 years, accumulating 315,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and conviction for speeding in a CMV; he exceeded the speed limit by 20 mph.

Rojelio Garcia-Pena

Mr. Garcia-Pena, 49, has had amblyopia in his left eye since birth. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/400. Following an examination in 2011, his optometrist noted, ''Mr. Pena has full

visual fields in each eye as well as normal color vision. His best corrected visual acuity in his right eye is 20/20 and in his left eye 20/400. Following an examination in 2011, his optometrist noted, ''In my opinion, the above mentioned findings qualify Mr. Pena to operate a commercial vehicle safely.'' Mr. Garcia-Pena reported that he has driven straight trucks for 14 years, accumulating 280,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows two crashes; he was cited for one of the crashes, and no convictions for moving violations in a CMV.

John M. Riley

Mr. Riley, 34, has had amblyopia in his left eye since childhood. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/150. Following an examination in 2011, his optometrist noted, ''In my medical opinion, I believe Mr. Riley has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Riley reported that he has driven straight trucks for 15 years, accumulating 750,000 miles and tractor-trailer combinations for 15 years, accumulating 675,000 miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey A. Sheets

Mr. Sheets, 29, has aphakia in his right eye due to a traumatic injury sustained at age 3. The best corrected visual acuity in right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Sheets does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sheets reported that he has driven straight trucks for 7 years, accumulating 525,000 miles and tractor-trailer combinations for 1 year, accumulating 20,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scotty W. Sparks

Mr. Sparks, 37, has had amblyopia in his left eye since birth. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''It is my opinion that despite the poor visual acuity in Mr. Sparks left eye, he does have normal acuity in the right eye and normal visual fields in both eyes, allowing for sufficient vision to perform the driving tasks required to operate a commercial motor vehicle in interstate commerce.'' Mr. Sparks reported that he has driven straight trucks for 12 years, accumulating 288,000 miles. He holds a Class B CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scottie Stewart

Mr. Stewart, 57, has had amblyopia in his right eye since childhood. The best corrected visual acuity in right eye is hand motion vision and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''Patient has sufficient vision to perform said tasks required to operate a commercial vehicle.'' Mr. Stewart reported that he has driven tractor-trailer combinations for 23 years, accumulating 1.7 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles E. Stokes

Mr. Stokes, 59, has complete loss of vision in his right eye. The best corrected visual acuity in right eye is hand motion vision and in his left eye, 20/25. Following an examination in 2011, his ophthalmologist noted, ''Although both conditions can potentially be progressive, currently his monocular status and intact visual field would not prohibit him from operating a commercial vehicle.'' Mr. Stokes reported that he has driven straight trucks for 16 years, accumulating 1.5 million miles and tractor-trailer combinations for 18 years, accumulating 1.1 million miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows two crashes in a CMV, for which he was cited, and no convictions for moving violations in a CMV.

Timothy J. Sullivan

Mr. Sullivan, 60, has complete loss of vision in his left eye due to a traumatic injury sustained in 1998. The best corrected visual acuity in right eye is 20/20 and in his left eye, light perception. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, I feel Mr. Sullivan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sullivan reported that he has driven straight for 18 years, accumulating 1.4 million miles. He holds a Class E operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 23, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7088 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0042]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from nineteen individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0042 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The nineteen individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Joseph A. Bailey

Mr. Bailey, age 60, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bailey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a Commercial Motor Vehicle (CMV) safely. Mr. Bailey meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B Commercial Driver's License (CDL) from Virginia.

Patrick J. Beasley

Mr. Beasley, 39, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beasley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beasley meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Tounce H. Gaskin

Mr. Gaskin, 48, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 2 years. His endocrinologist certifies that Mr. Gaskin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gaskin meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Connecticut.

Joel Gonzalez

Mr. Gonzalez, 23, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gonzalez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzalez meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

John G. Hager, Jr.

Mr. Hager, 57, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hager understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hager meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have

diabetic retinopathy. He holds a Class B CDL from New Jersey.

Brian R. Hallisey

Mr. Hallisey, 36, has had ITDM since 1988. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hallisey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hallisey meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Charles C. Karver

Mr. Karver, 60, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Karver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Karver meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Benjamin Kimbrough, Jr.

Mr. Kimbrough, 50, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kimbrough understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kimbrough meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Kevin T. Kruchan

Mr. Kruchan, 26, has had ITDM since 1989. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kruchan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kruchan meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Jeffrey J. Lawrie

Mr. Lawrie, 49, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lawrie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lawrie meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Raymond Pittman, Jr.

Mr. Pittman, 52, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pittman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pittman meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

Christopher M. Reiman

Mr. Reiman, 30, has had ITDM since 1985. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reiman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reiman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Daniel J. Russell

Mr. Russell, 39, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Russell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russell meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Donald L. Russell, Jr.

Mr. Russell, 52, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Russell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russell meets the vision requirements of 49 CFR 391.41(b)(10).

His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Robert J. Smith

Mr. Smith, 51, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Robert J. Socha

Mr. Socha, 58, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Socha understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Socha meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Brian A. Tatum

Mr. Tatum, 39, has had ITDM since 1991. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tatum understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tatum meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Mississippi.

Thomas C. Torbett

Mr. Torbett, 38, has had ITDM since 1976. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Torbett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torbett meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Missouri.

Terry R. Wilker

Mr. Wilker, 52, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilker meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: March 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7086 Filed 3–22–12; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–0017; FMCSA–2007–0071; FMCSA–2009–0321]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 23, 2012. Comments must be received on or before April 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–0017; FMCSA–2007–0071; FMCSA–2009–0321, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR 381.

Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John R. Alger (KS)
Lyle H. Banser (WI)
Eric D. Bennett (NH)
Lloyd J. Botsford (MO)
Charley J. Davis (OK)
Derek T. Ford (MD)
Taras G. Hamilton (TX)
Thomas R. Hedden (IL)
Laurent G. Jacques (MA)
Lucio Leal (NE)
Earl R. Mark (IL)
Douglas A. Mendoza (MD)
Michael R. Moore (MD)
Danny Rolfe (ME)
Charles W. Towner, Jr. (FL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded

if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20251; 67 FR 10471; 67 FR 17102; 67 FR 19798; 68 FR 61857; 68 FR 74699; 68 FR 75715; 69 FR 10503; 69 FR 17267; 69 FR 19611; 70 FR 57353; 70 FR 72689; 71 FR 4194; 71 FR 6825; 71 FR 6829; 71 FR

13450; 71 FR 16410; 71 FR 19604; 72 FR 67340; 72 FR 71993; 73 FR 1395; 73 FR 6242; 73 FR 8392; 73 FR 9158; 73 FR 15254; 73 FR 16950; 75 FR 1835; 75 FR 9482; 75 FR 9484; 75 FR 13653; 75 FR 20881). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 23, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 19, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7125 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0381]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt nineteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective March 23, 2012. The exemptions expire on March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On February 6, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from nineteen individuals and requested comments from the public (77 FR 5870). The public comment period closed on March 7, 2012 and no comments were received.

FMCSA has evaluated the eligibility of the nineteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These nineteen applicants have had ITDM over a range of 1 to 37 years.

These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the February 6, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it has reviewed the driving records for Michael R. Miller and Timothy M. Rearick and are in favor of granting them Federal diabetes exemptions.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the nineteen exemption applications, FMCSA exempts, Roger L. Arcand, Jr. (RI), Marsha M. Colberg (WA), Robert D. Crissinger (MN), Scott W. Forsyth, Jr. (CO), Jose A. Garcia (NY), Fritz D. Gregory (UT), Gordon R. Kellogg (NY), Anthony P. Kesselring (FL), Don R. Kivi (ND), Vincent Ligotti (NY), Larry D. Miller (MN), Michael R. Miller (PA), Jack L. Phippen (WI), Richard A. Purk (CA), Timothy M. Rearick (PA), Jeremy Simmons (MA), Jack A. Tidey (AK), Brian E. Quick (VA) and Timothy W. Work (NY) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 9, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7120 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0366]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twelve individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective March 23, 2012. The exemptions expire on March 23, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

Background

On February 6, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 5874). That notice listed twelve applicants' case histories. The twelve individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the twelve applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The twelve exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, artery occlusion, glaucoma, prosthesis, macular scarring and complete loss of vision. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that sustained their vision conditions as adults have had them for a period of 4 to 23 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these twelve drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 35 years. In the past 3 years, two of the drivers were involved in crashes, and none were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 6, 2012 notice (77 FR 5874).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3

consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the twelve applicants, two of the drivers were involved in crashes and none were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the twelve applicants listed in the notice of February 6, 2012 (77 FR 5874).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the twelve individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twelve exemption applications, FMCSA exempts Eugenio V. Bermudez (MA), John A. Carroll, Jr. (AL), Mark W. Crocker (TN), Johnny Dillard (SC), Keith J. Haaf (VA), Edward M. Jurek (NY), Allen J. Kunze (ND), Jack W. Murphy, Jr. (OH), Mark A. Smalls (GA), Glenn R. Theis (MN), Peter A. Troyan (MI) and Gary Vines (AL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 9, 2012.

Larry W. Minor,

Associate Administration for Policy.

[FR Doc. 2012–7084 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0039]

Pipeline Safety: Cast Iron Pipe (Supplementary Advisory Bulletin)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing an advisory bulletin to owners and operators of natural gas cast iron distribution pipelines and state pipeline safety representatives. Recent deadly explosions in Philadelphia and Allentown, Pennsylvania involving cast iron pipelines installed in 1942 and 1928, respectively, gained national attention and highlight the need for continued safety improvements to aging gas pipeline systems. This bulletin is an update of two prior Alert Notices (ALN–91–02; October 11, 1991 and ALN–92–02; June 26, 1992) covering the continued use of cast iron pipe in natural gas distribution pipeline systems. This advisory bulletin reiterates two prior Alert Notices which remain relevant, urges owners and operators to conduct a comprehensive review of their cast iron distribution pipelines and replacement programs and accelerate pipeline repair, rehabilitation and replacement of high-risk pipelines, requests state agencies to consider enhancements to cast iron replacement plans and programs, and alerts owners and operators of the pipeline safety requirements for the investigation of failures. In addition, the latest survey and reporting requirements of cast iron pipelines required by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 are included for information.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety home page at: *http://ops.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jeff Gilliam, Director, Engineering and Research, 202–366–0568 or by email at *Jeffery.Gilliam@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2011, an explosion and fire caused the death of one gas utility employee and injuries to several other people while gas utility crews were responding to a natural gas leak in Philadelphia, PA. A preliminary investigation found a circumferential

break on a 12-inch cast iron distribution main that was installed in 1942, and was operating at 17 pounds per square inch gauge (psig) pressure at the time of incident. An investigation continues toward finding the cause.

On February 9, 2011, five people lost their lives and a number of homes were destroyed and other properties impacted by an explosion and subsequent fire in Allentown, PA. A preliminary investigation found a crack in a 12-inch cast iron natural gas distribution main that was installed in 1928, and was operating at less than 1 psig at the time of incident. The crack was located below grade near the destroyed homes. An investigation continues toward finding the cause.

Alert Notice (ALN–91–02)

On October 11, 1991, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), issued Pipeline Safety Alert Notice (ALN–91–02) alerting pipeline operators of National Transportation Safety Board recommendation P–91–12 in response to the August 1990 explosion and fire in Allentown, PA, caused by a crack in a 4-inch cast iron gas main. The recommendation stated:

> ''Require each gas operator to implement a program, based on factors such as age, pipe diameter, operating pressure, soil corrosiveness, existing graphitic damage, leak history, burial depth, and external loading, to identify and replace in a planned, timely manner cast iron piping systems that may threaten public safety.''

The Alert Notice informed distribution pipeline operators with cast iron pipe of the following:

—The Gas Piping Technology Committee developed guide material to assist them in developing procedures for determining the serviceability of the cast iron pipe and to identify the cast iron pipe segments that may need replacement.

—Computer programs are commercially available that can be used to develop a systematic replacement program for cast iron pipe.

—Pipeline safety regulations require that cast iron pipe on which general graphitization is found to a degree where a fracture might result must be replaced. In addition, the regulations require that cast iron pipe that is excavated must be protected against damage. An operator's compliance with the above guidelines and code requirements can be enhanced by incorporating all of the operator's cast iron responsibilities in an effective cast iron management program that is designed to identify and replace or remove from service cast iron pipe that may threaten the public.

Alert Notice (ALN–92–02)

On June 26, 1992, RSPA issued a Pipeline Safety Alert Notice (ALN–92–02) as a Supplementary Alert Notice to the 1991 Alert Notice. The Supplementary Alert Notice reminded pipeline operators of the requirement at 49 CFR 192.613 that each operator have a procedure for continuing surveillance of its pipeline facilities to identify problems and take appropriate action concerning failures, leakage, history, corrosion, and other unusual operating and maintenance conditions. This procedure should also include surveillance of cast iron to identify problems and to take appropriate action concerning graphitization.

II. Advisory Bulletin (ADB–2012–05)

To: Each Owner and Operator of a Natural Gas Cast Iron Distribution Pipeline Facility and State Pipeline Safety Representatives.

Subject: Cast Iron Pipe (Supplementary Advisory Bulletin).

Purpose: To Address Continued Concerns Rising Out of Recent Cast Iron Incidents.

Advisory:

On October 11, 1991, Alert Notice (ALN–91–02) was issued reminding all operators of natural gas distribution systems to have a program to identify and replace cast iron piping systems that may threaten public safety. RSPA also informed operators of guidelines and computer programs that were available to help operators determine the serviceability of cast iron pipe and schedule its replacement or retirement. On June 26, 1992, Alert Notice (ALN–92–02) was issued informing pipeline operators that § 192.613 required each operator to have a procedure for continuing surveillance of its pipeline facilities to identify problems and take appropriate action concerning failures, leakage, history, corrosion, and other unusual operating and maintenance conditions. This procedure should also include surveillance of cast iron to identify problems and to take appropriate action concerning graphitization. The two Alert Notices remain relevant, and reaffirm the need for operators of gas cast iron distribution systems to maintain an effective cast iron management program.

PHMSA urges owners and operators to conduct a comprehensive review of their cast iron distribution pipeline systems and replacement programs and to accelerate pipeline repair, rehabilitation, and replacement of aging and high-risk pipe. Recent incidents, such as the deadly explosions in Philadelphia and Allentown, Pennsylvania involving cast iron pipe failures, have focused attention on our Nation's aging pipeline infrastructure and underline the importance of having valid methods for evaluating the integrity of pipelines to better ensure public safety. PHMSA recommends owners and operators of natural gas cast iron pipelines assure their replacement program models are based on relevant risk factors.

In addition, PHMSA reminds owners and operators of cast iron distribution pipelines of their responsibility for the investigation of all failures and that each operator must establish procedures for analyzing incidents and failures, including laboratory examination of failed pipe segments and equipment, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence [192.617]. Owners and operators are required to review pipeline records, validate safe pipeline operating pressure levels and accelerate repairs and replacement where improvements in safety are necessary. The Distribution Integrity Management Program (DIMP) requires natural gas distribution companies to develop and implement DIMP for the pipelines they own, operate or maintain.

PHMSA is asking owners and operators of cast iron distribution pipelines and state pipeline safety representatives to consider the following where improvements in safety are necessary:

—Request, review and monitor operator cast iron replacement plans and programs, actively encourage operators to develop and continually update and follow their plans, and consider establishment of mandated replacement programs.

—Establish accelerated leakage survey frequencies or leak testing considering results from failure investigations and environmental risk factors.

—Focus pipeline safety efforts on identifying the highest risk pipe.

—Use rate adjustments and flexible rate recovery mechanisms to incentivize pipeline rehabilitation, repair and replacement programs.

—Strengthen pipeline safety inspections, accident investigations and enforcement actions.

—Install interior/home methane gas alarms.

The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, was signed into law (Pub. L. 112–90) on January 3, 2012. Section 7 of the new law requires the U.S. Department of Transportation to measure every two years the progress that owners and operators of pipeline facilities have made in adopting and implementing their plans for the safe management and replacement of cast iron gas pipelines. Additionally, not later than December 31, 2013, the Secretary of Transportation must submit to Congress a report that — (1) Identifies the total mileage of cast iron gas pipelines in the United States; and (2) evaluates the progress that owners and operators of pipeline facilities have made in implementing their plans for the safe management and replacement of cast iron gas pipelines.

PHMSA is committed to working with owners and operators of natural gas cast iron distribution pipelines and state pipeline safety representatives to ensure our Nation's pipeline infrastructure is safe and well-maintained.

Issued in Washington, DC, on March 20, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–7080 Filed 3–22–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35605]

RailAmerica, Inc., Palm Beach Rail Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Control Exemption—Wellsboro & Corning Railroad, LLC

RailAmerica, Inc. (RailAmerica), Palm Beach Rail Holding, Inc. (Palm Beach), RailAmerica Transportation Corp. (RTC), RailTex, Inc. (RailTex), Fortress Investment Group, LLC (Fortress), and RR Acquisition Holding, LLC (RR Acquisition) (collectively, RailAmerica *et al.*), have filed a verified notice of exemption to acquire indirect control of the Wellsboro & Corning Railroad, LLC (W&C), a Class III rail carrier, through the acquisition of control of TransRail Holdings, LLC (TransRail), the parent of W&C, by RailTex.

The proposed transaction is scheduled to be consummated on or after April 7, 2012 (30 days after the notice of exemption was filed).

W&C acquired the assets of the Wellsboro & Corning Railroad Co.[1] W&C owns and operates 35.5 miles of track between Wellsboro, PA., milepost 109.90, and Erwin, N.Y., milepost 74.70, in Tioga County, PA., and Steuben County, N.Y. W&C interchanges traffic with the Norfolk Southern Railway Company and the Canadian Pacific Railway Company.

According to the verified notice of exemption, RailTex entered a Unit Purchase Agreement dated January 31, 2012 (the Agreement), with (1) TransRail, (2) Industrial Waste Group, LLC (IWG), (3) Wellsboro & Corning Railroad Co., and (4) A. Thomas Myles III, A. Thomas Myles IV, and William Myles (the MG Principals). The MG Principals own TransRail, and TransRail owns W&C and the successor to IWG. Under the Agreement, RailTex will acquire 100% of the Class A Common Units of TransRail, giving RailTex a 70% ownership interest in TransRail and control of W&C through TransRail. The MG Principals will retain the Class B Common Units of TransRail, thereby retaining a 30% interest in TransRail, though they will not retain control or the power to control W&C.

Fortress' noncarrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the noncarrier RailAmerica, which directly controls the noncarrier Palm Beach, which directly controls the noncarrier RTC.

RailAmerica states that it controls the following Class III rail carriers: (1) Alabama & Gulf Coast Railway LLC; (2) Arizona & California Railroad Company; (3) Bauxite & Northern Railway Company; (4) California Northern Railroad Company; (5) Cascade and Columbia River Railroad Company; (6) Central Oregon & Pacific Railroad, Inc.; (7) The Central Railroad Company of Indiana; (8) Central Railroad Company of Indianapolis; (9) Connecticut Southern Railroad, Inc.; (10) Conecuh Valley Railway, LLC; (11) Dallas, Garland & Northeastern Railroad, Inc.; (12) Delphos Terminal Railroad Company, Inc.; (13) Eastern Alabama Railway, LLC; (14) Huron & Eastern Railway Company, Inc.; (15) Indiana & Ohio Railway Company; (16) Indiana Southern Railroad, LLC; (17) Kiamichi Railroad Company, LLC; (18) Kyle Railroad Company; (19) The Massena Terminal Railroad Company; (20) Mid-Michigan Railroad, Inc.; (21) Missouri & Northern Arkansas Railroad Company, Inc.; (22) New England Central Railroad, Inc.; (23) North Carolina & Virginia Railroad Company, LLC; (24) Otter Tail Valley Railroad Company, Inc.; (25) Point Comfort & Northern Railway Company; (26) Puget Sound & Pacific Railroad; (27) Rockdale, Sandow & Southern Railroad Company; (28) San Diego & Imperial Valley Railroad Company, Inc.; (29) San Joaquin Valley Railroad Company; (30) South Carolina Central Railroad Company, LLC; (31) Three Notch Railway, LLC; (32) Toledo, Peoria & Western Railway Corporation; (33) Ventura County Railroad Corp.; and (34) Wiregrass Central Railway, LLC.[2]

Further, Fortress, on behalf of other equity funds managed by it and its affiliates, directly controls the noncarrier FECR Rail LLC, which directly controls FEC Rail Corp., which directly controls Florida East Coast Railway, LLC, a Class II rail carrier.

RailAmerica et al. states that: (1) W&C does not connect with any of RailAmerica's subsidiary railroads; (2) the proposed transaction is not part of a series of anticipated transactions to connect W&C and any of RailAmerica's subsidiary railroads; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one or more Class III rail carriers and one Class II rail carrier, the transaction is subject to the labor protective requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by March 30, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35605 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 20, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–7054 Filed 3–22–12; 8:45 am]

BILLING CODE 4915–01–P

[1] *Wellsboro & Corning R.R.—Acquis. & Operation Exemption—Wellsboro & Corning R.R.,* FD 35595 (STB served Feb. 22, 2012).

[2] On February 3, 2012, in Docket No. FD 35592, RailAmerica et al. filed a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 to acquire control of Marquette Rail, LLC, a Class III rail carrier. The Board issued a notice on February 28, 2012, instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2012–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2012 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2012 RCAF (Unadjusted) is 1.185. The second quarter 2012 RCAF (Adjusted) is 0.520. The second quarter 2012 RCAF–5 is 0.492.

DATES: *Effective Date:* April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 19, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–7048 Filed 3–22–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35602]

Indiana Southern Railroad, LLC—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement (Agreement), has agreed to grant overhead temporary trackage rights to Indiana Southern Railroad, LLC (ISRR) over NSR's line of railroad between Oakland City Junction, Ind. (milepost 0.8 EJ) and Enosville, Ind. (milepost 4.8 EJ), a distance of approximately 4 miles.[1]

The transaction may be consummated on or after April 8, 2012, the effective date of the exemption (30 days after the verified notice of exemption was filed).[2] The temporary trackage rights are scheduled to expire on December 31, 2012. The purpose of the temporary trackage rights is to bridge loaded and empty coal trains between trackage at Log Creek Mine at Enosville and ISRR's tracks at Oakland City Junction for further movement over ISRR's line to Indiana Power and Light's generating plant at Petersburg, Ind.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad & The Union Pacific Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than March 30, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35602, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John W. Humes, Jr., Senior Counsel, Rail America, Inc., 7411 Fullerton Street, Jacksonville, FL 32256.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 19, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–7053 Filed 3–22–12; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the Agreement between NSR and ISRR was filed with the notice of exemption. ISRR simultaneously filed a motion for protective order for approval to file under seal the unredacted version of the Agreement. That motion will be addressed in a separate decision.

[2] Accompanying its verified notice of exemption, ISRR also filed a request to waive the requirement at 49 CFR 1180.4(g)(1) that the verified notice be filed at least 30 days before the transaction is consummated. In a separate decision served today, the Board is denying that request.

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Office of the Procurement Executive

AGENCY: Department of Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department of the Treasury, Office of the Procurement Executive, is soliciting comments on these collections of information that are scheduled to expire.

DATES: Written comments must be received on or before May 22, 2012 to be assured of consideration.

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

www.PRAComment.gov. To provide your comments, selected the ''comment page'' link and follow the instructions for submitting comments.

email: *Frenando.Tonolete@treasury.gov.* The subject line should contain the OMB number and title for which you are commenting.

Mail: Fernando Tonolete, Office of the Procurement Executive, Department of the Treasury, 1500 Pennsylvania Ave. NW., Metropolitan Square, Suite 6B517, Washington DC 20220.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or request a copy of the information collection should be directed to Fernando Tonolete (202) 622–6416.

SUPPLEMENTARY INFORMATION: *OMB Number:* 1505–0080.

Type of Review: Extension without change of a currently approved collection.

Title: Post-Contract Award Information.

Abstract: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to

determine contractors' compliance with the contracts, in order to protect the Government's interest.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Number of Respondents: 9,213.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 24.

Estimated Total Annual Burden Hours: 221,118.

OMB Number: 1505–0081.

Type of Review: Extension without change of a currently approved collection.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Abstract: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposal most benefit the Government.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Number of Respondents: 32,345.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 9.

Estimated Total Annual Burden Hours: 291,103.

OMB Number: 1505–0107.

Type of Review: Extension without change of a currently approved collection.

Title: Regulation Agency Protests.

Abstract: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 2.

Estimated Total Annual Burden Hours: 50.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–6991 Filed 3–22–12; 8:45 am]

BILLING CODE 4810– 25–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 Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to information with respect to certain foreign-owned corporations.

DATES: Written comments should be received on or before May 22, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P. Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545–1191.

Regulation Project Number: T.D. 8353.

Abstract: This document contains final Income Tax Regulations relating to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code. These regulations are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000.

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: March 16, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–6974 Filed 3–22–12; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *AIR FORCE:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *ENERGY:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave. SW., Washington, DC 20585: (202) 586–5422; *NAVY:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: March 15, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/23/2012

Suitable/Available Properties

Building

California

Facility 1
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830012
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830014
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830015
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830016
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830017
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830018
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
OTHB Radar Site
Christmas Valley CA 97641

Landholding Agency: Air Force
Property Number: 18200830019
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Bldg. 5435
Davis Ave.
Barksdale CA 71101
Landholding Agency: Air Force
Property Number: 18201140041
Status: Underutilized
Comments: off-site removal only; 3,024 sq. ft.; current use: bank; need repairs

Colorado

Bldg. 1425 and 143
Peterson AFB
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18201140024
Status: Unutilized
Comments: off-site removal only; 1425—64,254 sq. ft.; 143—100 sq. ft.; current use: storage to base exchange; need repairs; possible asbestos

Florida

Fac. 90329
Cape Canaveral AFS
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210085
Status: Excess
Comments: 4,203 sq. ft.; current use: office; very poor conditions—needs extensive repairs

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Maine

Bldgs 1, 2, 3, 4
OTH–B Radar Site
Columbia Falls ME
Landholding Agency: Air Force
Property Number: 18200840009
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

Nebraska

10 Bldgs.
Temp. Lodging
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201120014
Status: Excess
Directions: 5089, 5090, 5091, 5092, 5093, 5094, 5095, 5097, 5098, 5099
Comments: off-site removal only, sq. ft. varies btw. each bldg., current-use: temp. lodging, good to fair conditions for all bldgs.

Bldg. 5087
Capehart Housing Area
Offut NE 68113
Landholding Agency: Air Force
Property Number: 18201140027
Status: Excess
Comments: 25LF-wide, 14LF-height, 30LF-length; current use: exchange store; good to fair condition

New Mexico

Bldg. 1802
200 West Terminal Ave.
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201210099
Status: Unutilized
Comments: Off site removal only; 3,780 sq. ft.; recent use: office; restricted access

Bldg 1803
403 Olympic Blvd.
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201210100
Status: Unutilized
Comments: Off site removal only; 3,780 sq. ft.; recent use: office bldg.; restricted access

2 Bldgs.
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201210111
Status: Underutilized
Directions: 2321 and 2322
Comments: Off-site removal only; sq. ft. varies; current use: varies; poor conditions—need repairs

New York

Bldg. 240
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

South Carolina

256 Housing Units
Charleston AFB
South Side Housing
Charleston SC
Landholding Agency: Air Force
Property Number: 18200920001
Status: Excess
Comments: Various sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 291
Pop Chamber Dr.
Charleston Weapons SC 29445
Landholding Agency: Air Force
Property Number: 18201210103
Status: Unutilized
Comments: Off site removal only; 225 sq. ft.; recent use: equipment storage

Bldg. 906
Joint Base Charleston-Weapons
Charleston SC 29445
Landholding Agency: Air Force
Property Number: 18201210105
Status: Unutilized
Directions: Enter base gate on Red Bank Rd and continue, passing Old Turn Rd. Turn right at Bldg 2 and follow rd on right side of Bldg 2. Bldg 906 is on right side.
Comments: Off site removal only; 400 sq. ft.; recent use: storage of spill kit items

Texas

Band Center
Lackland
San Antonio TX
Landholding Agency: Air Force
Property Number: 18201140038
Status: Unutilized
Comments: Off-site removal only; 15,669 sq. ft.; current use: band center; need repairs

Land

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force
Property Number: 18200820034
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Massachusetts

Land/TRACT #A101
McDill Rd.
Bedford MA 07131
Landholding Agency: Air Force
Property Number: 18201130003
Status: Unutilized
Comments: 5.35 acres, recent use: AF trailer court, property limitation: local Bedford Zoning By-Laws (Industrial Park District A–IP)

Missouri

Communications Site
County Road 424
Dexter MO
Landholding Agency: Air Force
Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

North Carolina

0.14 acres
Pope AFB
Pope AFB NC
Landholding Agency: Air Force
Property Number: 18200810001
Status: Excess
Comments: Most recent use—middle marker, easement for entry

Texas
0.13 acres
DYAB, Dyess AFB
Tye TX 79563
Landholding Agency: Air Force
Property Number: 18200810002

Status: Unutilized
Comments: Most recent use—middle marker, access limitation

Suitable/Unavailable Properties

Building

Colorado

Bldg. 810—Trailer
270 South Aspen Street
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201110005
Status: Unutilized
Comments: Off-site removal only; 1,768 sq. ft; current use: pilot crew qtrs. fair conditions—$5,000 (estimated in repairs)

Bldg 811—Crews Trailer
272 South Aspen Street
Buckley AFB
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201110008
Status: Unutilized
Comments: Off-site removal only, 2,340 sq. ft., current use; pilot crew qtrs. fair conditions—estimated $5,000 in repairs

AF Academy
8010 Sage Brush Dr.
USAF Academy CO 80840
Landholding Agency: Air Force
Property Number: 18201140026
Status: Unutilized
Comments: 2,670 sq. ft.; current use: unknown; 2007 Nat'l Register of Historic Places; fair conditions; possible asbestos

New York

Bldg. 302
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10,288 sq. ft., presence of asbestos, most recent use—communications facility

Washington

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1,996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2,134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 1,425 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1,620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2,850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2,574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2,451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Land

Missouri

Outer Marker Annex
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18200940001
Status: Unutilized
Comments: 0.75 acres, most recent use—communication

Annex No. 3
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18201020001
Status: Underutilized
Comments: 9 acres

South Dakota

Tract 133
Ellsworth AFB
Box Elder SD 57706
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
GSA Number:
Comments: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
GSA Number:
Comments: 121 acres, bentonite layer in soil, causes movement

Unsuitable Properties

Building

Alabama

5 Bldgs.
Maxwell-Gunter AFB
Maxwell AL 36112
Landholding Agency: Air Force
Property Number: 18201030001
Status: Unutilized
Directions: 28, 423, 811, 839, 1081
Comments: national security concerns; no public access or no alternative method to gain access; bldg. 423 was previously reported for portion; updated to report entire fac.
Reasons: Secured Area

4 Bldgs.
Birmingham IAP
Birmingham AL
Landholding Agency: Air Force
Property Number: 18201120050
Status: Underutilized
Directions: 202, 204, 205, 391
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force
Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Bldg. 3224
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1437, 1190, 2375
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830002

Status: Unutilized
Directions: 3300, 3301, 3315, 3347, 3383
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830003
Status: Unutilized
Directions: 4040, 4332, 4333, 4480
Reasons: Secured Area, Extensive deterioration

Bldgs. 6122, 6205
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 8128
Elmendorf AFB
Elmendorf AK 99506
Landholding Agency: Air Force
Property Number: 18200830005
Status: Underutilized
Reasons: Secured Area

Bldgs. 615, 617, 751, 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18200920015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. 100, 101
Point Barrow Long Range
Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldg. 100 and 101
Long Range Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201020003
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

7 Bldgs.
Eareckson Air Station
Eareckson AK 99546
Landholding Agency: Air Force
Property Number: 18201020004
Status: Unutilized
Directions: 132, 152, 153, 750, 3013, 3016, and 4012
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

33 Bldgs.
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201040005
Status: Excess
Directions: 5137, 5138, 5139, 5140, 5141, 5142, 5143, 5144, 5161, 5162, 5163, 5183, 5184, 5185, 5186, 5196, 5197, 5211, 5255, 5256, 5257, 5259, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5268
Reasons: Extensive deterioration, Secured Area

Bldg. 5198 and 5258
660 Edna Street
Eielson AFB AK
Landholding Agency: Air Force
Property Number: 18201120023
Status: Excess
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Clear AFB
Clear Denali AK
Landholding Agency: Air Force
Property Number: 18201120024
Status: Unutilized
Directions: 101, 103, 104, 105, 150
Reasons: Secured Area, Extensive deterioration

Bldg. 5198
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201120054
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 5312
9th Street
JBER AK 99506
Landholding Agency: Air Force
Property Number: 18201130010
Status: Underutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 662 and 664
5th Street
Elmendorf AK 99505
Landholding Agency: Air Force
Property Number: 18201130011
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 5226
2552 Coman Street
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201130012
Status: Unutilized
Reasons: Contamination, Extensive deterioration, Secured Area

Bldg. 658
Elmendorf
Elmendorf AK 99505
Landholding Agency: Air Force
Property Number: 18201130013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3305
Sourdough Inn
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201130014
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3354
MFH Self Help Store
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201130015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Elmendorf
JBER AK 99506
Landholding Agency: Air Force
Property Number: 18201130017
Status: Underutilized
Directions: 7210, 5303, 12757, 12761, 12763
Comments: Reasons for unsuitability vary among properties.
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. 719 and 3055
Eareckson Air Station
Eareckson AK 99546
Landholding Agency: Air Force
Property Number: 18201130019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3356
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201130020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 667
5th Street
Elmendorf AK 99505
Landholding Agency: Air Force
Property Number: 18201130038
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

Arkansas

Military Family Housing, 2 Bld
Eielson AFB
Eielson AR 99702
Landholding Agency: Air Force
Property Number: 18201110007
Status: Excess
Directions: Bldgs: 5258 & 5198
Reasons: Extensive deterioration

Bldg. 2383
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140064
Status: Excess
Reasons: Secured Area

13 Bldgs.
Military Family Housing
Little Rock AR 92099
Landholding Agency: Air Force
Property Number: 18201140065
Status: Excess

Directions: 2355, 2368, 2369, 2370, 2371, 2376, 2378, 2385, 2397, 2481, 2405, 2447, 2457
Reasons: Secured Area

8 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140066
Status: Excess
Directions: 2413, 2416, 2421, 2425, 2440, 2441, 2453, 2458
Reasons: Secured Area

14 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140067
Status: Excess
Directions: 2356, 2358, 2365, 2380, 2399, 2407, 2408, 2410, 2419, 2442, 2445, 2449, 2452, 2456
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140068
Status: Excess
Directions: 2432, 2434, 2437
Reasons: Secured Area

12 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140069
Status: Excess
Directions: 2366, 2367, 2390, 2422, 2426, 2427, 2428, 2429, 2430, 2431, 2433, 2436
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140070
Status: Excess
Directions: 2392, 2393, 2394
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140071
Status: Excess
Directions: 2384, 2391, 2404
Reasons: Secured Area

9 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140072
Status: Excess
Directions: 2372, 2409, 2411, 2446, 2448, 2450, 2451, 2455, 2460
Reasons: Contamination, Secured Area

Arkansas

22 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140073
Status: Excess
Directions: 2354, 2373, 2374, 2375, 2377, 2381, 2382, 2386, 2387, 2388, 2395, 2396, 2400, 2402, 2403, 2406, 2412, 2414, 2418, 2439, 2454, 2459
Reasons: Secured Area

6 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140074
Status: Excess
Directions: 2379, 2398, 2420, 2423, 2424, 2435
Reasons: Secured Area

13 Bldgs.
Military Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140075
Status: Excess
Directions: 2357, 2359, 2360, 2361, 2362, 2363, 2364, 2411, 2417, 2438, 2443, 2444, 2461
Reasons: Secured Area

California

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200730003
Status: Unutilized
Reasons: Extensive deterioration, Within airport runway clear zone, Secured Area

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 1952, 1953, 1957, 1958
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Extensive deterioration, Secured Area

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Secured Area, Extensive deterioration

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 601 thru 610
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force

Property Number: 18200820026
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 300, 387
Pt Arena Comm. Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 700, 707, 796, 797
Pt. Arena Comm. Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Extensive deterioration, Secured Area

6 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930001
Status: Unutilized
Directions: 355, 421, 1062, 1088, 1250, 1280
Reasons: Extensive deterioration

7 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930002
Status: Unutilized
Directions: 2160, 2171, 2340, 2432, 2491, 2560, 5800
Reasons: Extensive deterioration

14 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940006
Status: Unutilized
Directions: 4158, 3936, 3942, 3947, 4314, 4318, 4256, 4120, 4103, 3871, 3873, 3887, 3919, 4133
Reasons: Extensive deterioration

Bldgs. 4320, 800
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940007
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940008
Status: Unutilized
Directions: 4136, 5223, 5228, 5278
Reasons: Extensive deterioration

Bldgs. 1154, 2459, 5114
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201010004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1213
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201030002
Status: Unutilized
Reasons: Extensive deterioration

37 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040014
Status: Unutilized
Directions: 4199, 4205, 4207, 4211, 4215, 4218, 4219, 4222, 4226, 4227, 4229, 4230, 4231, 4238, 4241, 4242, 4256, 4260, 4264, 4268, 4284, 4286, 4308, 4310, 4314, 4318, 4320, 4333, 4341, 4353, 4355, 4382, 4384, 4395, 4397, 4399, 4401
Reasons: Extensive deterioration

38 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040015
Status: Unutilized
Directions: 4415, 4417, 4457, 4467, 4475, 4496, 4534, 4598, 4600, 4603, 4605, 4618, 4620, 4634, 4636, 4639, 4641, 4659, 4661, 4664, 4666, 4675, 4677, 4691, 4693, 4703, 4705, 4708, 4710, 4717, 4719, 4724, 4725, 4726, 4727, 4732, 4734, 4522
Reasons: Extensive deterioration

11 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040016
Status: Unutilized
Directions: 5205, 5216, 5223, 5228, 5236, 5238, 5277, 5278, 5279, 5294, 5297
Reasons: Extensive deterioration

36 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040017
Status: Unutilized
Directions: 3873, 3887, 3919, 3936, 3942, 3947, 3961, 4075, 4103, 4105, 4115, 4118, 4119, 4120, 4122, 4133, 4136, 4137, 4142, 4145, 4148, 4151, 4157, 4158, 4161, 4166, 4171, 4178, 4179, 4181, 4184, 4185, 4189, 4193, 4197, 4198
Reasons: Extensive deterioration

Bldg. 1055
7910 Arnold Ave.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201120001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 3304
4850 Camp Beale Hwy
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201120002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1056
7944 Arnold Ave.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201120004
Status: Unutilized
Reasons: Secured Area, Floodway, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 2457
17700 25th St.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201120008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 7201
501 Payne Ave
Edwards AFB CA
Landholding Agency: Air Force
Property Number: 18201120046
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldgs. 2110 & 2111
Edwards AFB
Edwards AFB CA
Landholding Agency: Air Force
Property Number: 18201120047
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone

Bldgs. 12 & 14
Jones Rd, Edwards AFB
Edwards AFB CA
Landholding Agency: Air Force
Property Number: 18201120048
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 3304
Beale AFB
Beale CA
Landholding Agency: Air Force
Property Number: 18201120049
Status: Unutilized
Reasons: Extensive deterioration

3 Bldgs.
Beale AFB
Beale CA
Landholding Agency: Air Force
Property Number: 18201120053
Status: Unutilized
Directions: 5705, 5706, 5707
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

3 Bldgs.
USAF
Barkdale CA 71110
Landholding Agency: Air Force
Property Number: 18201130007
Status: Unutilized
Directions: B–4134, B–4143, B4714
Comments: Reasons for unsuitability vary among properties.
Reasons: Secured Area, Within 2,000 ft. of flammable or explosive material

14 Bldgs.
Surf Road
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201130016
Status: Unutilized

Directions: 595, 768, 995, 996, 997, 1537, 1538, 1539, 1820, 1835, 1960, 22104, 22107, 22112
Reasons: Secured Area, Extensive deterioration

16 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201130035
Status: Unutilized
Directions: 5516, 9644, 2111, 4286, 4290, 4291, 4292, 4410, 4412, 4954, 4957, 4963, 4964, 5502, 5512, 5514
Reasons: Secured Area, Contamination, Within airport runway clear zone, Extensive deterioration

Fresno Yosemite Intern'l ANG
5323 E. McKinley Ave.
Fresno CA 93727
Landholding Agency: Air Force
Property Number: 18201140001
Status: Underutilized
Reasons: Secured Area

17 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140008
Status: Unutilized
Directions: 8799, 8814, 8822, 8824, 8832, 9588, 9635, 4258, 4260, 304, 1865, 2585, 3501, 3512, 3523, 3735, 3742
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone

19 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140019
Status: Unutilized
Directions: 4271, 4261, 4264, 4267, 4268, 4272, 4273, 4274, 4280, 4281, 4402, 4904, 4953, 4962, 8668, 8701, 4241, 4242, 4243
Reasons: Extensive deterioration, Within 2,000 ft. of flammable or explosive material, Secured Area

10 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140020
Status: Unutilized
Directions: 4244, 4245, 4246, 4247, 4252, 4255, 4254, 4248, 4256, 4257
Reasons: Extensive deterioration, Secured Area, Within 2,000 ft. of flammable or explosive material

Bldg. 283
483 N. Aviation Blvd.
El Segundo CA 90292
Landholding Agency: Air Force
Property Number: 18201140025
Status: Underutilized
Reasons: Extensive deterioration, Secured Area

38 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140034
Status: Unutilized
Directions: 3945, 4097, 4126, 4138, 4141, 4156, 4160, 4300, 4334, 4350, 4352, 4374, 4346, 4379, 4381, 4394, 4396, 4406, 4408, 4591, 4593, 4594, 4596, 4599, 4601, 4602, 4604, 4623, 4625, 4630, 4631, 4632, 4633, 4634, 4645, 4647, 4648, 4649
Reasons: Extensive deterioration

27 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140035
Status: Unutilized
Directions: 4650, 4651, 4653, 4656, 4658, 4667, 4669, 4672, 4674, 4676, 4678, 4696, 4698, 4704, 4707, 4712, 4714, 4720, 4721, 4722, 4723, 4728, 4730, 4736, 4738, 4756, 4758
Reasons: Extensive deterioration

7 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140051
Status: Unutilized
Directions: 3119, 3121, 3123, 3125, 3126, 3127, 3128
Reasons: Extensive deterioration

26 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140052
Status: Unutilized
Directions: 5220A, 5220B, 5232A, 5232B, 5235A, 5235B, 5274A, 5247B, 5256A, 5256B, 5269A, 5269B, 5271A, 5271B, 5275A, 5275B, 5283A, 5283B, 5285A, 5285B, 5288A, 5288B, 5292A, 5292A, 5216A, 5296B
Reasons: Extensive deterioration

Bld. 2110
Fitzgerald Blvd.
Edwards CA 83524
Landholding Agency: Air Force
Property Number: 18201140053
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 2111
107 Fitzgerald Blvd.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140054
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

4 Bldgs.
Payne Ave.
Edwards CA
Landholding Agency: Air Force
Property Number: 18201140055
Status: Unutilized
Directions: 7197, 7198, 7199, 7200
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 12
Jones Road
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140056
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldgs. 7206 and 7208
Payne Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

4 Bldgs.
Payne Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140058
Status: Unutilized
Directions: 7202, 7203, 7204, 7205
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

4 Bldgs.
Payne Ave
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140059
Status: Unutilized
Directions: 7193, 7194, 7195, 7196
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldgs. 7177 and 7197
401 and 405 14th Street
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140060
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 7176 and 7178
400 and 404 13th St.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140061
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 2425
215 Spiro Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140062
Status: Underutilized
Reasons: Secured Area

2 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201210086
Status: Unutilized
Directions: 9530 and 9531
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

7 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201210087
Status: Unutilized
Directions: 3496, 9641, 602, 4269, 4951, 7981, 8804
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

4 Bldgs.

Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201210088
Status: Unutilized
Directions: 9532, 9533, 9536, 9593
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

3 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201210089
Status: Unutilized
Directions: 9020, 9520, 9526
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–200508 and B–200509
Marine Corps Air Station
San Diego CA
Landholding Agency: Navy
Property Number: 77201210004
Status: Excess
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

9 Bldgs.
Marine Corp Air Station
San Diego CA
Landholding Agency: Navy
Property Number: 77201210005
Status: Excess
Directions: 200513, 200514, 200515, 200516, 200517, 200518, 200519, 200520, 200523
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–200558
Marine Corps Air Station
San Diego CA
Landholding Agency: Navy
Property Number: 77201210006
Status: Excess
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Colorado

Bldg. 9038
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200920004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 6980
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200940009
Status: Unutilized
Reasons: Secured Area

Bldgs. 6966, 6968, 6930, 6932
USAF Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201010005
Status: Unutilized
Reasons: Secured Area

Bldg. 1413
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201020006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201030004
Status: Unutilized
Directions: 2330, 2331, 2332, 2333, 3190, 9020, 9035
Reasons: Secured Area

Florida

Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Contamination, Secured Area

Bldg. 202
Avon Park AF Range
Polk FL 33825
Landholding Agency: Air Force
Property Number: 18200930005
Status: Unutilized
Reasons: Extensive deterioration

Facility 47120
Cape Canaveral AFB
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200940010
Status: Unutilized
Reasons: Secured Area

Florida

15 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201010006
Status: Unutilized
Directions: 129, 131, 138, 153, 156, 419, 743, 745, 1003, 1269, 1354, 1355, 1506, 6063, 6067
Reasons: Secured Area

4 Bldgs.
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201010007
Status: Unutilized
Directions: 56621, 56629, 56632, 67901
Reasons: Secured Area

Bldgs. 1622, 60408, and 60537
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201020007
Status: Unutilized
Reasons: Secured Area

Florida

13 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201020008
Status: Excess
Directions: B111, B113, B115, B205, B206, B501, B810, B812, B824, B842, B1027, B1257, and B8402
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 90023
Hurlburt Field
Hurlburt FL 32544
Landholding Agency: Air Force
Property Number: 18201030005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 89002
Cape Canaveral AFS
Brevard FL 32920
Landholding Agency: Air Force
Property Number: 18201030006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

9 Bldgs
Null
Cape Canaveral AFS FL 32925
Landholding Agency: Air Force
Property Number: 18201110009
Status: Unutilized
Directions: Bldgs: 44606, 49942, 70650, 78710, 07702, 8801, 8806, 8814, 10751
Reasons: Secured Area

4 Bldgs
Cape Canaveral
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201120025
Status: Excess
Directions: 5401, 5403, 7200, 60748
Reasons: Secured Area

10 Bldgs.
Tyndall AFB
Tyndall FL 32403
Landholding Agency: Air Force
Property Number: 18201120027
Status: Underutilized
Directions: 505, 729, 1013, 1015, 1016, 1476, 1701, 6014, 6016, 6020
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive materil, Secured Area

Bldgs. 6028 and 6030
Florida Ave
Tyndall FL 32403
Landholding Agency: Air Force
Property Number: 18201120028
Status: Underutilized
Reasons: Extensive deterioration, Floodway, Within airport runway clear zone, Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Tyndall AFB
Tyndall FL
Landholding Agency: Air Force
Property Number: 18201120055
Status: Underutilized
Directions: B106, B124, B164, B180, B181, B182
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration, Within airport runway clear zone

10 Bldgs.
Tyndall AFB

Tyndall FL
Landholding Agency: Air Force
Property Number: 18201120057
Status: Underutilized
Directions: 505, 729, 1013, 1015, 1016, 1476, 1701, 6014, 6016, 6020
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldgs. 3013 and 3018
Duke Field
Okaloosa FL 32542
Landholding Agency: Air Force
Property Number: 18201130021
Status: Underutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Facility 3021
Duke Field
Okaloosa FL 32542
Landholding Agency: Air Force
Property Number: 18201130029
Status: Underutilized
Reasons: Contamination, Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 1050
28 South Blvd.
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18201130036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1021 and 1037
125 Fighter Wing
Jacksonville FL 32218
Landholding Agency: Air Force
Property Number: 18201140010
Status: Unutilized
Reasons: Secured Area

Bldg. 90343
320 Tully St
Hurlburt FL 32544
Landholding Agency: Air Force
Property Number: 18201140023
Status: Underutilized
Reasons: Extensive deterioration, Secured Area

3 Bldgs.
Hurlburt Field
Hurburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201140037
Status: Underutilized
Directions: 90034, 900345, 90330
Reasons: Extensive deterioration

Bldg. 1608
14560 Samuel C. Phillips Pkwy
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210094
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Bldgs. 70662 and 70663
476 Loop Rd.
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210096
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Bldg. 49645
15215 Samuel C. Phillips Pkwy
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210097
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Bldgs. 56930 and 56926
Skybolt Rd.
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210098
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Bldg. 74100
350 Pier Rd.
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201210101
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

4 Bldgs.
Hurlburt Field
Hurlburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201210112
Status: Underutilized
Directions: Bldgs. 90315, 90317, 90137, 90336
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

B–877 and 952
NAS Jacksonville
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201210007
Status: Unutilized
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Georgia

6 Cabins
QSRG Grassy Pond Rec Annex
Lake Park GA 31636
Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized
Reasons: Secured Area

Bldg. 205
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 104, 118, 739, 742, 973
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 134, 804, 841, 978
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201010008
Status: Underutilized
Reasons: Secured Area

Bldgs. 665 and 1219
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201020009
Status: Underutilized
Reasons: Secured Area

7 Bldgs.
Moody AFB
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201030007
Status: Unutilized
Directions: 112, 150, 716, 719, 757, 1220, 1718
Reasons: Secured Area

Facility 1413
Savannah Hilton Intern'l Airport
Garden City GA 31408
Landholding Agency: Air Force
Property Number: 18201140015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1112 and 1114
Munitions Circle
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201140028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

4 Bldgs.

3274 Georgia St.
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201140029
Status: Underutilized
Directions: 894, 895, 896, 897
Reasons: Extensive deterioration

Guam

Bldg. 1094
AAFB Yigo
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200830007
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Andersen AFB
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200920006
Status: Excess
Reasons: Secured Area

Bldgs. 72, 73, 74
Andersen AFB
Mount Santa Rosa GU
Landholding Agency: Air Force
Property Number: 18200920017
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 101, 102
Andersen AFB
Pots Junction GU
Landholding Agency: Air Force
Property Number: 18200920018
Status: Excess
Reasons: Extensive deterioration

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Bldg. 1713
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18200830008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1843
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200920019
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1716
RPUID
Wake Island HI
Landholding Agency: Air Force
Property Number: 18201010009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 12
Kokee AFS
Waimea HI
Landholding Agency: Air Force
Property Number: 18201010010
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 501
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18201010011
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Kaena Point Satellite
Tracking Station
Honolulu HI
Landholding Agency: Air Force
Property Number: 18201010012
Status: Excess
Directions: 16, 18, 20, 21, 32, 33
Reasons: Extensive deterioration

Bldgs. 39 and 14111
Kaena Point Satellite Tracking Station
Honolulu HI 96792
Landholding Agency: Air Force
Property Number: 18201020010
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Wake Island
Wake Island HI 96898
Landholding Agency: Air Force
Property Number: 18201130018
Status: Unutilized
Directions: 400, 1403, 1406, 1407, 1408, 1411
Reasons: Extensive deterioration, Secured Area, Contamination, Floodway

Idaho

7 Bldgs.
Falcon Street
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201130008
Status: Underutilized
Directions: 4201, 4202, 4205, 4206, 4207, 4208, 4209
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
Mountain Home AFB
Mountain Home ID 83647
Landholding Agency: Air Force
Property Number: 18201130032
Status: Excess
Directions: 2408, 1222, 1224, 1226, 1229, 1359
Comments: Reasons for unsuitability varies among properties
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

Illinois

4 Bldgs.
Scott AFB
Scott IL 62225
Landholding Agency: Air Force
Property Number: 18201130023
Status: Excess
Directions: 48, 1910, 1527, 1911
Reasons: Secured Area

Bldg. 3138
Scott AFB
Scott IL 62225
Landholding Agency: Air Force
Property Number: 18201140050
Status: Unutilized
Comments: Beyond economical repair
Reasons: Extensive deterioration

Indiana

Bldg. 103
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 18
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18201020012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Kansas

27 Bldgs.
McConnell AFB
Sedgwick KS 67210
Landholding Agency: Air Force
Property Number: 18201020013
Status: Excess
Directions: 2052, 2347, 2054, 2056, 2044, 2047, 2049, 2071, 2068, 2065, 2063, 2060, 2237, 2235, 2232, 2230, 2352, 2349, 2345, 2326, 2328, 2330, 2339, 2324, 2342, 2354, and 2333
Reasons: Secured Area

4 Bldgs.
Military Family Housing
McConnell AFB
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210090
Status: Excess
Directions: 2063, 2275, 2273, 2272
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

12 Bldgs. (Duplexes—3 BR)
Military Family Housing
McConnell AFB
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210091
Status: Excess
Directions: 2246, 2249, 2251, 2254, 2265, 2370, 2372, 2384, 2386, 2279, 2277, 2268
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

5 Bldgs. (Duplexes—2 BR)
Military Family Housing
McConnell AFB
McConnell KS 67210

Landholding Agency: Air Force
Property Number: 18201210092
Status: Excess
Directions: 2378, 2381, 2375, 2257, 2259
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

5 Bldgs.
Military Housing
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210107
Status: Unutilized
Directions: 2378, 2381, 2375, 2257, 2259
Comments: Nat'l security concerns; no public access and no alternative method to gain access.
Reasons: Secured Area

12 Bldgs.
Military Housing
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210108
Status: Excess
Directions: 2246, 2249, 2251, 2254, 2265, 2370, 2372, 2384, 2386, 2279, 2268
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

4 Bldgs.
Military Housing
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201210109
Status: Excess
Directions: 3029, 3008, 3012, 3016
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Bldg. 49928
210 SAB Rd.
Cape Canaveral KS 32925
Landholding Agency: Air Force
Property Number: 18201210110
Status: Excess
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Louisiana

Barksdale Middle Marker
Null
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

TARS Sites 1–6
Null
Morgan City LA 70538
Landholding Agency: Air Force
Property Number: 18201020014
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201110001
Status: Underutilized
Directions: Bldgs: 5163, 5175, 7227, 7266, 7321, 7322
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 5745 and 7253
615 Davis Ave.
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120022
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldgs. 7253 & 7254
Barksdale AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120035
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 7254
Barksdale AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120056
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 1359
Davis Ave.
Barkdale LA 71101
Landholding Agency: Air Force
Property Number: 18201140040
Status: Underutilized
Comments: Beyond repair
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

Maine

Facilities 1, 2, 3, 4
OTH–B Site
Moscow ME 04920
Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Bldgs. B496 and 497
Bangor Internatl Airport
Bangor ME 04401
Landholding Agency: Air Force
Property Number: 18201020015
Status: Unutilized
Reasons: Secured Area

Maryland

Maryland Air Nat'l Guard
2701 Eastern Blvd.
Baltimore MD
Landholding Agency: Air Force
Property Number: 18201140006
Status: Excess
Directions: Facility 1130
Reasons: Secured Area

Massachusetts

Bldg. 180
180 Guard Shack
Otis MA
Landholding Agency: Air Force
Property Number: 18201120040
Status: Underutilized
Reasons: Extensive deterioration, Within airport runway clear zone, Secured Area

Bldg. 191
191 Izzea St.
Otis ANGB MA
Landholding Agency: Air Force
Property Number: 18201120041
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone

Bldg. 198
198 Izzea St.
Otis ANGB MA
Landholding Agency: Air Force
Property Number: 18201120042
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 201
201 Reilly St.
Otis MA
Landholding Agency: Air Force
Property Number: 18201120043
Status: Underutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3230
3230 Simpkins Rd.
Otis MA
Landholding Agency: Air Force
Property Number: 18201120044
Status: Underutilized
Reasons: Extensive deterioration

Michigan

6 Bldgs.
Alpena CRTC
Alpena MI
Landholding Agency: Air Force
Property Number: 18201120045
Status: Underutilized
Directions: 322, 323, 324, 403, 412, 413
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Mississippi

5 Bldgs.
AFB
Kessler MS 39534
Landholding Agency: Air Force
Property Number: 18201110004
Status: Excess
Directions: Bldgs: B2804, B4203, B4812, B6903, B6918
Reasons: Secured Area

Bldg. 1809
Columbus AFB
Columbus MS 39710
Landholding Agency: Air Force
Property Number: 18201120030
Status: Excess
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material

Facilities 178 and 179
Thompson Field
Jackson MS 39232
Landholding Agency: Air Force
Property Number: 18201140003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Storage, Liquid Oxygen
RPUID 455250
Meridian MS
Landholding Agency: Air Force
Property Number: 18201140004
Status: Unutilized
Reasons: Secured Area

Missouri

Res Forces Opl Trng
Lambert- St. Louis
St. Louis MO 63044
Landholding Agency: Air Force
Property Number: 18201140007
Status: Unutilized
Directions: 18, 235, 131
Reasons: Secured Area, Extensive deterioration

Montana

Bldgs. 1600, 1601
Malmstrom AFB
Cascade MT 59402
Landholding Agency: Air Force
Property Number: 18200920020
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs. AFB
107 77th Street North
Malmstrom AFB
Malmstrom MT 59402–7540
Landholding Agency: Air Force
Property Number: 18201110002
Status: Underutilized
Directions: 581, 800, 1082, 1152, 1156, 1705, 3065
Reasons: Secured Area

10 Bldgs.
Malmstorm AFB
Malmstorm MT
Landholding Agency: Air Force
Property Number: 18201120036
Status: Unutilized
Directions: 130, 226, 248, 320, 370, 448, 471, 650, 1145, 1151
Reasons: Secured Area

5 Bldgs.
Malmstrom AFB
Malmstrom MT
Landholding Agency: Air Force
Property Number: 18201120037
Status: Unutilized
Directions: 1192, 1702, 1884, 2000, 4000
Reasons: Secured Area

Malmstrom Radio Relay Annex
Malmstrom AFB
Malmstrom MT
Landholding Agency: Air Force
Property Number: 18201130004
Status: Excess
Reasons: Extensive deterioration

9 Bldgs.
Malmstrom AFB
Malmstrom MT 59402
Landholding Agency: Air Force
Property Number: 18201130005
Status: Unutilized
Directions: 219, 250, 1409, 1410, 1902, 1903, 1904, 1905, 2041
Reasons: Secured Area

4 Bldgs.
Malmstrom AFB
Malmstrom MT 59402
Landholding Agency: Air Force
Property Number: 18201140039
Status: Unutilized
Directions: 630, 1869, 8001, 1874
Reasons: Secured Area

Nebraska

Bldgs. 163, 402, 554
Offutt AFB
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201030008
Status: Excess
Reasons: Secured Area

Bldg. 481
AFB
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201120010
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

New Hampshire

Bldg. 152
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200920007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

New Hampshire

Bldg. 16
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200930006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 256
Portsmouth Int'l Airport
Newington NH
Landholding Agency: Air Force
Property Number: 18201120038
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

New Jersey

Bldgs. 2609, 2611
Joint Base
McGuire NJ
Landholding Agency: Air Force
Property Number: 18201010013
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Joint Base McGuire-Dix-Lakehurst
Trenton NJ 08641
Landholding Agency: Air Force
Property Number: 18201020016
Status: Unutilized
Directions: 1827, 1925, 3424, 3446, and 3449
Reasons: Secured Area, Extensive deterioration

Bldgs. 2304 and 9144
Joint Base McGuire-Dix-Lakehurst
Trenton NJ
Landholding Agency: Air Force
Property Number: 18201130024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3305
JBMDL
McGuire NJ 08641
Landholding Agency: Air Force
Property Number: 18201140011
Status: Excess
Reasons: Extensive deterioration, Floodway, Within 2000 ft. of flammable or explosive material, Secured Area

20 Bldgs.
Weapons Racks—JBMDL
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140042
Status: Unutilized
Directions: 9126, 9189, 9064E, 9079C, 9083, 9091D, 9099F,9817, 9835, 9853, 9856A, 9706, 9722, 9737, 9544, 9536, 9477, 9459B, 9460A, 9419A
Comments: No potential to meet criteria—beyond economical repair
Reasons: Extensive deterioration

16 Bldgs.
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140043
Status: Unutilized
Directions: 9169A, 9176, 9066D, 9703, 9765, 3531, 3532, 3533, 3534, 3535, 3536, 9482, 9464, 8548, 9487, 9425
Comments: No potential to meet criteria- not economically feasible
Reasons: Extensive deterioration

3 Bldgs.
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140044
Status: Unutilized
Directions: 9066C, 9196, 9855A
Comments: No potential to meet criteria- not economically feasible
Reasons: Extensive deterioration

8 Bldgs.
Joint base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140045
Status: Unutilized
Directions: 9139, 9157, 9860, 9868, 9462, 9462A, 9467, 9427
Comments: No potential to meet criteria—not economically feasible
Reasons: Extensive deterioration

6 Bldgs.
Ammunition Hut
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140047
Status: Unutilized
Directions: 9151, 9856, 9867, 9483, 9465, 9211
Comments: No potential to meet criteria—not economically feasible
Reasons: Extensive deterioration

3 Bldgs.
Nat'l Guard Bureau
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201210084
Status: Excess
Directions: 3373, 3312, 3303
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008

Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 20612, 29071, 37505
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200830010
Status: Unutilized
Reasons: Secured Area

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200920008
Status: Unutilized
Directions: 71, 1187, 1200, 1284, 1285
Reasons: Secured Area

6 Bldgs.
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930007
Status: Unutilized
Directions: 920, 921, 922, 923, 924, 930
Reasons: Secured Area

Bldgs. 1113, 1127
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930008
Status: Unutilized
Reasons: Secured Area

Bldg. 30143
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200930009
Status: Excess
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 1267, 1620
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200940013
Status: Unutilized
Reasons: Secured Area

Bldgs. 214, 851, 1199
Holloman AFB
Holloman AFB NM 88330
Landholding Agency: Air Force
Property Number: 18201010014
Status: Underutilized
Reasons: Secured Area

Bldg. 865
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030009
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 790
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 880
1241 Moroni
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040001
Status: Unutilized
Reasons: Secured Area

Bldg. 825
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 867
1293 Bong St.
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201120017
Status: Unutilized
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

4 Bldgs.
Kirtland AFB
Kirtland NM
Landholding Agency: Air Force
Property Number: 18201120034
Status: Underutilized
Directions: 376, 614, 1905, 30101
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldgs. 525 and 730
Kirtland AFB
Kirtland NM 87117
Landholding Agency: Air Force
Property Number: 18201130002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1800
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201130009
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone

2 Bldgs.
Connecticut Holloman AFB
Holloman NM 88310
Landholding Agency: Air Force
Property Number: 18201130037
Status: Unutilized
Directions: 272 and 273
Reasons: Secured Area, Within airport runway clear zone

Bldgs. 1054 and 1070
251 Air Guard Dr. SE
Kirtland NM 87117
Landholding Agency: Air Force
Property Number: 18201140005
Status: Excess
Reasons: Secured Area

Bldg. 1059
Holloman AFB
Holloman NM 88310
Landholding Agency: Air Force
Property Number: 18201140032
Status: Underutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 306
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201140033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

2 Bldgs.
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201210083

Status: Unutilized
Directions: 792, 817
Comments: Nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

New York

Bldg. 104
Rome Research Site
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18201130001
Status: Unutilized
Reasons: Secured Area

3 Bldgs.
AvFuels Circle
Niagara Falls NY 14304
Landholding Agency: Air Force
Property Number: 18201140014
Status: Unutilized
Directions: 919, 922, 2410
Reasons: Secured Area

Bldgs. 21 and 22
Air Nat'l Guard Road
Scotia NY 12302
Landholding Agency: Air Force
Property Number: 18201140016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

5 Bldgs.
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040012
Status: Unutilized
Directions: 120,200,250,255,300
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 370
1400 32nd Ave. N.
Fargo ND 58102
Landholding Agency: Air Force
Property Number: 18201140002
Status: Underutilized
Reasons: Secured Area

Ohio

Facility 30089
5490 Pearson
Wright Patterson AFB OH 45433
Landholding Agency: Air Force
Property Number: 18201130022
Status: Excess
Reasons: Secured Area, Extensive deterioration

Facility 20040
2330 K. Street
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201130030
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Wright-Patterson AFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201140048
Status: Underutilized
Directions: 20455, 20456, 20451, 31244, 34046, 34059
Reasons: Secured Area

2 Bldgs.
Wright-Patterson AFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201140049
Status: Unutilized
Directions: 31197 and 20329
Reasons: Secured Area

Oklahoma

3 Bldgs.
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201040013
Status: Excess
Directions: 296, 444, 503
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

Control Tower Facility 163
626 Elam Road
Vance Air Force Base
Vance OK
Landholding Agency: Air Force
Property Number: 18201110006
Status: Excess
Reasons: Secured Area, Within airport runway clear zone

Bldg. 39, AGGN
500 North First Street
Altus OK
Landholding Agency: Air Force
Property Number: 18201120019
Status: Excess
Reasons: Secured Area

Bldg 415
605 N. Perimeter Rd
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201120020
Status: Excess
Reasons: Secured Area

7 Bldgs.
AGGN
Altus OK
Landholding Agency: Air Force
Property Number: 18201120021
Status: Excess
Directions: 296, 358, 374, 376, 377, 413, 445
Reasons: Secured Area

11 Bldgs.
4329 N. Corsair Ave
Tulsa Int'l Airport
Tulsa OK 74115
Landholding Agency: Air Force
Property Number: 18201120026
Status: Underutilized
Directions: 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

Facility 188
1065 Elam Road
Vance AFB
Enid OK
Landholding Agency: Air Force
Property Number: 18201120033
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

12 Bldgs.
Tinker AFB
Tinker OK 73145
Landholding Agency: Air Force
Property Number: 18201140018
Status: Excess
Directions: 2126, 2211, 2212, 3108, 3212, 3215, 3535, 3772, 5801, 5802, 5803, 5897
Reasons: Secured Area

9 Bldgs.
Tinker AFB
Tinker OK 73145
Landholding Agency: Air Force
Property Number: 18201140046
Status: Excess
Directions: 5927, 7013, 7035, 7036, 7042, 208, 935, 1084, 2113
Comments: Reasons of unsuitability varies
Reasons: Secured Area, Floodway

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200920021
Status: Unutilized
Directions: B14, B22, B31, B116, B218, B232, B343, B3403
Reasons: Secured Area

South Carolina

Bldg. B1626
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200930010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

10 Bldgs.

Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940014
Status: Unutilized
Directions: B16, B34, B122, B219, B220, B221, B403, B418, B428, B430
Reasons: Secured Area

5 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940015
Status: Unutilized
Directions: B800, B900, B911, B1040, B1041
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumber SC 29152
Landholding Agency: Air Force
Property Number: 18200940016
Status: Unutilized
Directions: B1702, B1707, B1708, B1804, B1813, B1907, B5226
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201020017
Status: Unutilized
Directions: B1026, B400, B401, B1402, B1701, B1711, and B1720
Reasons: Secured Area

Bldgs. B40006 and B40009
Shaw AFB
Wedgefield SC 29168
Landholding Agency: Air Force
Property Number: 18201020018
Status: Unutilized
Reasons: Secured Area

Bldg. B411
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201030010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

25 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040006
Status: Excess
Directions: 1501B, 1503A, 1503B, 1506A, 1508A, 1508B, 1512A, 1514A, 1520A, 1520B, 1529A, 1531A, 1531B, 1533A, 1533B, 1537A, 1539A, 1540A, 1540B, 1563A, 1563B, 1565B, 1576A, 1577A, 1577B
Reasons: Secured Area

20 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040007
Status: Excess
Directions: 1505A, 1505B, 1506B, 1507B, 1510A, 1510B, 1514B, 1516A, 1516B, 1518B, 1532B, 1533B, 1538B, 1539B, 1575B, 1576B, 1576B, 1578B, 1579B, 1580A, 1580B
Reasons: Secured Area

13 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040008
Status: Excess
Directions: 1501A, 1507A, 1509A, 1517A, 1518A, 1533A, 1535A, 1538A, 1565A, 1575A, 1578A, 1579A, 1688A
Reasons: Secured Area

4 Bldgs.
JB AFB
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040010
Status: Excess
Directions: 1515, 1530, 1536, 1571
Reasons: Secured Area

12 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040018
Status: Excess
Directions: 1512B, 1529B, 1537B, 1519A, 1519B, 1688B, 1690A, 1690B, 1509B, 1517B, 1521A, 1521B
Reasons: Secured Area

2 Bldgs.
Edwards AFB
Edwards SC 93524
Landholding Agency: Air Force
Property Number: 18201040019
Status: Excess
Directions: 1014, 1015
Reasons: Secured Area

Bldg. 1
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120006
Status: Excess
Reasons: Secured Area

B823
518 Polifka St.
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120007
Status: Excess
Reasons: Secured Area

Bldg. 408
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120011
Status: Excess
Reasons: Secured Area

Bldg. 1422
515 Exchange St.
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120012
Status: Excess
Reasons: Secured Area

B1425
516 Exchange St.
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120015
Status: Excess
Reasons: Extensive deterioration

B409
421 Johnson St.
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201120018
Status: Excess
Reasons: Secured Area

B113
102 Patrol Rd.
Sumter SC
Landholding Agency: Air Force
Property Number: 18201120051
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Shaw AFB
Sumter SC
Landholding Agency: Air Force
Property Number: 18201210082
Status: Excess
Directions: B–702, B–1049, B–1128
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 6927
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200830011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Tennessee

Bldgs. 250 & 506
PSXE (Mcghee Tyson Aprt)
320 Post Ave., McGhee Tyson ANG
Louisville TN
Landholding Agency: Air Force
Property Number: 18201120039
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 214 and 219
240 Knapp Blvd.
Nashville TN 37217
Landholding Agency: Air Force
Property Number: 18201140013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

3 Bldgs.
Nat'l Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41201210004
Status: Excess
Directions: 9404–03A, 9720–74, 9754–03
Comments: nat'l security concerns; no public access and no alternative method to gain access
Reasons: Secured Area

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye TX 79563

Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840005
Status: Unutilized
Directions: B–4003, 4120, B–4124, 4127, 4130
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840006
Status: Unutilized
Directions: 7225, 7226, 7227, 7313
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840007
Status: Unutilized
Directions: 8050, 8054, 8129, 8133
Reasons: Secured Area

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840008
Status: Unutilized
Directions: B–9032, 9107, 9114, B–9140, 11900
Reasons: Secured Area

Bldg. B–4228
FNWZ Dyess AFB
Taylor TX 79607
Landholding Agency: Air Force
Property Number: 18200920009
Status: Unutilized
Reasons: Secured Area

Bldgs. B–3701, B–3702
FNWZ Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920010
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4
Tethered Aerostat Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920023
Status: Excess
Reasons: Secured Area

Bldg. FNXH 2001
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930013
Status: Unutilized
Directions: FNWZ 7235, 7312, 7405, 8045, 8120, 9113
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Dyess AFB TX
Landholding Agency: Air Force
Property Number: 18200940017
Status: Unutilized
Directions: FNWZ 5017, 5305, 6015, 6122
Reasons: Secured Area

Bldg. 351
Laughlin AFB
Del Rio TX 78840
Landholding Agency: Air Force
Property Number: 18201010016
Status: Unutilized
Reasons: Secured Area

Bldgs. 6115, 6126, 6127
Dyess AFB
Dyess TX 79607
Landholding Agency: Air Force
Property Number: 18201030011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
AFB
Sheppard TX 76311–2621
Landholding Agency: Air Force
Property Number: 18201110003
Status: Unutilized
Directions: Bldgs: 17, 19, 21, 147, 526, 726, 982, 1664
Reasons: Extensive deterioration

Bldg. 111
AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18201110012
Status: Excess
Reasons: Secured Area

5 Bldgs.
Goodfellow AFB
Goodfellow TX
Landholding Agency: Air Force
Property Number: 18201120029
Status: Excess
Directions: 137, 139, 144, 320, 712
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Facility 6120 & 6122
Lackland AFB
Lackland TX
Landholding Agency: Air Force
Property Number: 18201120031
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

3 Bldgs.
Lackland AFB
Lackland TX
Landholding Agency: Air Force
Property Number: 18201120032
Status: Underutilized
Directions: 6119, 6125, 6309
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Joint Base San Antonio
Houston TX 78234
Landholding Agency: Air Force
Property Number: 18201140063
Status: Unutilized
Directions: 4112, 4113, 4114, 4124
Comments: not feasible to repair
Reasons: Extensive deterioration

Utah

Bldg. 3002
Francis Peak ANG Station
Farmington UT 84025
Landholding Agency: Air Force
Property Number: 18201140012
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Vermont

4 Bldgs.
Burling IAP
Burling VT 05403
Landholding Agency: Air Force
Property Number: 18201140017
Status: Excess
Directions: 114, 115, 116, 117
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Virginia

12 Bldgs
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18200920012
Status: Unutilized
Directions: 35, 36, 903, 905, 1013, 1020, 1033, 1050, 1066, 1067, 1069, 1075
Reasons: Secured Area, Floodway

Bldgs. 38, 52
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201010018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 52, 568, 731
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201030012
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Joint Base Langley Eustis
AFB
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201110011
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 405
Kerr Rd.
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201120003
Status: Underutilized
Reasons: Extensive deterioration

Ft. Eustis
801 Lee Blvd.
Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201120005
Status: Underutilized
Reasons: Extensive deterioration

Bldg. 2738
Harrison Loop
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201120009

Status: Underutilized
Reasons: Extensive deterioration

Bldg. 435
Joint Base Langley Eustis
Eustis VA
Landholding Agency: Air Force
Property Number: 18201120013
Status: Unutilized
Reasons: Extensive deterioration

Facility 999
400 Clarke Ave.
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201120016
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 11 & 12
Langley AFB
Langley VA
Landholding Agency: Air Force
Property Number: 18201120052
Status: Underutilized
Reasons: Secured Area

Bldg. 254
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201140030
Status: Underutilized
Reasons: Secured Area, Floodway

Bldgs. 244 and 253
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201140031
Status: Underutilized
Reasons: Floodway, Secured Area

Bldg. 449
Joint Base Langley-Eustis
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201140036
Status: Unutilized
Comments: Deteriorated beyond repair
Reasons: Extensive deterioration

Washington

Defense Fuel Supply Point
18 structures/21 acres
Mukilteo WA
Landholding Agency: Air Force
Property Number: 18200910001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 455 and 456
Paine Field ANG Station
Evertt WA 98204
Landholding Agency: Air Force
Property Number: 18201140009
Status: Excess
Reasons: Secured Area, Within airport runway clear zone

West Virginia

Bldgs. 102, 106, 111
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200920013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 101, 110
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200940018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

6 Bldgs.
USAF
Warren WY 82005
Landholding Agency: Air Force
Property Number: 18201130006
Status: Unutilized
Directions: 835, 836, 839, 945, 985, 2350
Reasons: Secured Area

Land

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031
Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Facilities 99002 thru 99014
Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Florida

Defense Fuel Supply Point
Null
Lynn Haven FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

Illinois

Annex
Scolt Radio Relay
Belleville IL 62221
Landholding Agency: Air Force
Property Number: 18201020011
Status: Unutilized
Reasons: Secured Area

Indiana

1.059 acres
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

North Dakota

JFSE
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Texas

Rattlesnake ESS
FNWZ, Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920011
Status: Unutilized
Reasons: Secured Area

24 acres
Tethered Aerostate Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920022
Status: Excess
Reasons: Secured Area

FNXH 99100
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

2.43 acre/0.36 acre
Dyess AFB
Dyess AFB TX 79563
Landholding Agency: Air Force
Property Number: 18200930014
Status: Unutilized
Directions: FNXL 99104, 99108, 99110, 99112, FNXM 99102, 99103, 99108
Reasons: Within airport runway clear zone

[FR Doc. 2012–6674 Filed 3–22–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part III

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 431, 435 and 457

Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 435, and 457

[CMS–2349–F]

RIN 0938–AQ62

Medicaid Program; Eligiblity Changes Under the Affordable Care Act of 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; Interim final rule.

SUMMARY: This final rule implements several provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act). The Affordable Care Act expands access to health insurance coverage through improvements to the Medicaid and Children's Health Insurance (CHIP) programs, the establishment of Affordable Insurance Exchanges (''Exchanges''), and the assurance of coordination between Medicaid, CHIP, and Exchanges. This final rule codifies policy and procedural changes to the Medicaid and CHIP programs related to eligibility, enrollment, renewals, public availability of program information and coordination across insurance affordability programs.

DATES: *Effective Date:* These regulations are effective on January 1, 2014.

Comment Date: Certain provisions of this final rule are being issued as interim final. We will consider comments from the public on the following provisions: § 431.300(c)(1) and (d), § 431.305(b)(6), § 435.912, § 435.1200, § 457.340(d), § 457.348 and § 457.350(a), (b), (c), (f), (i), (j), and (k).

To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on May 7, 2012.

ADDRESSES: In commenting, please refer to file code CMS–2349–F. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed)

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2349–F, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2349–F, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the ''**SUPPLEMENTARY INFORMATION**'' section.

FOR FURTHER INFORMATION CONTACT: Sarah delone, (410) 786–0615. Stephanie Kaminsky, (410) 786–4653.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

In addition, several sections in this final rule are being issued as interim final rules and we are soliciting comment on those sections. Given the highly connected nature of these provisions, we are combining provisions that are being issued as an interim final rule and provisions that are being issued as a final rule into a single document so that a reader will be able to see the context and interrelationships in the overall regulatory framework.

Table of Contents

I. Executive Summary
II. Background
III. Summary of Proposed Provisions and Analysis of and Responses to Public Comments
A. Changes to Medicaid Eligibility
B. Financial Methodologies for Determining Medicaid Eligibility Based on MAGI Under the Affordable Care Act (§ 435.603)
C. Residency for Medicaid Eligibility Defined (§ 435.403)
D. Timeliness Standards (§ 435.912)
E. Application and Enrollment Procedures for Medicaid (§ 435.905, § 435.907, and § 435.908)
F. MAGI Screen (§ 435.911)
G. Coverage Month (§ 435.917)
H. Verification of Income and Other Eligibility Criteria (§ 435.940, § 435.945, § 435.948, § 435.949, § 435.952, and § 435.956)
I. Periodic Renewal of Medicaid Eligibility (§ 435.916)
J. Coordination of Eligibility and Enrollment Among Insurance Affordability Programs—Medicaid Agency Responsibilities (§ 435.1200)
K. Single State Agency (§ 431.10 and § 431.11)
L. Implementing Application of MAGI to CHIP (§ 457.10, § 457.301, § 457.305, § 457.315, and § 457.320)
M. Residency for CHIP Eligibility (§ 457.320)
N. CHIP Coordinated Eligibility and Enrollment Process (§ 457.330, § 457.340, § 457.343, § 457.348, § 457.350, § 457.353, and § 457.380)
O. FMAP for Newly Eligible Individuals and for Expansion States (§ 433.10, § 433.206, § 433.210, and § 433.212)
IV. Provisions of the Final Rule
V. Waiver of Proposed Rulemaking

VI. Collection of Information Requirements
VII. Summary of Regulatory Impact Analysis

I. Executive Summary

The legal authority for this final rule comes from the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010), and together referred to as the Affordable Care Act of 2010 (Affordable Care Act).

This final rule implements several provisions of the Affordable Care Act related to Medicaid eligibility, enrollment and coordination with the Affordable Insurance Exchanges (Exchanges), the Children's Health Insurance Program (CHIP), and other insurance affordability programs. It also simplifies the current eligibility rules and systems in the Medicaid and CHIP programs. This final rule: (1) Reflects the statutory minimum Medicaid income eligibility level of 133 percent of the Federal Poverty Level (FPL) across the country for most non-disabled adults under age 65; (2) eliminates obsolete eligibility categories and collapses other categories into four primary groups: children, pregnant women, parents, and the new adult group; (3) modernizes eligibility verification rules to rely primarily on electronic data sources; (4) codifies the streamlining of income-based rules and systems for processing Medicaid and CHIP applications and renewals for most individuals; and (5) ensures coordination across Medicaid, CHIP, and the Exchanges.

Several provisions of this rule are issued on an interim final basis. As such, we will consider comments from the public on the following provisions:

§ 431.300(c)(1) and (d) and § 431.305(b)(6)—Safeguarding information on applicants and beneficiaries.

§ 435.912—Timeliness and performance standards for Medicaid.

§ 435.1200—Coordinated eligibility and enrollment among insurance affordability programs.

§ 457.340(d)—Timeliness standards for CHIP.

§ 457.348—Coordinated eligibility and enrollment among CHIP and other insurance affordability programs.

§ 457.350(a), (b), (c), (f), (i), (j), and (k)—Coordinated eligibility and enrollment among CHIP and other insurance affordability programs.

II. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), and amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010), are together referred to as the Affordable Care Act of 2010 (Affordable Care Act). Section 205 of the Medicare & Medicaid Extenders Act of 2010 (Pub. L. 111–309, enacted December 15, 2010) made technical corrections to the Social Security Act (the Act) to implement the Affordable Care Act. The Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112–56, enacted November 21, 2011), changed the MAGI definition of income to include all Social Security benefits.

In the August 17, 2011 **Federal Register** (76 FR 51148), we published a proposed rule entitled ''Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010,'' (hereinafter referred to as ''Medicaid Eligibility proposed rule''). This Medicaid Eligibility proposed rule was published in concert with three other proposed rules: the July 15, 2011 rule titled ''Establishment of Exchanges and Qualified Health Plans;'' the August 17, 2011 rule titled ''Exchange Functions in the Individual Market: Eligibility Determinations and Exchange Standards for Employers;'' and the August 17, 2011 rule titled ''Health Insurance Premium Tax Credit Proposed Rule.'' These rules proposed eligibility and enrollment provisions for the Affordable Insurance Exchanges and the accompanying changes to the Internal Revenue Code (IRC) needed to implement the calculation of modified adjusted gross income (MAGI) for purposes of determining eligibility for assistance with purchasing health coverage. Together, these proposed rules were designed to implement the eligibility and enrollment-related provisions of the Affordable Care Act that expand access to health coverage through improvements in Medicaid and CHIP and the establishment of the new Affordable Insurance Exchanges. In addition, the proposed rules simplify and streamline the enrollment and renewal processes and create alignment across insurance affordability programs.

III. Summary of Proposed Provisions and Analysis of and Responses to Public Comments

We received a total of 813 comments from State Medicaid and CHIP agencies, policy and advocacy organizations, health care providers and associations, Tribes, Tribal organizations, and individual citizens. In addition, we held many consultation sessions with States and interested parties, including three sessions with Tribal governments (August 22, 2011, September 7, 2011, and September 15, 2011), to provide an overview of the Medicaid Eligibility proposed rule where interested parties were afforded an opportunity to ask questions and make comments. At these consultation sessions, the public was reminded to submit written comments before the close of the public comment period that was announced in the Medicaid Eligibility proposed rule.

The vast majority of commenters supported the policies we proposed, although, as discussed below, there were concerns about some specific policies. In particular, a large number of comments focused on the need for coverage options for individuals with disabilities. Summaries of the public comments that are within the scope of the proposals and our responses to those comments follow.

We have revised the proposed regulation to reflect our final policies. However, some comments were outside the scope of the Medicaid Eligibility proposed rule, and therefore, are not addressed in this final rule. In some instances, commenters raised policy or operational issues that will be addressed through regulatory and subregulatory guidance subsequent to this final rule; therefore some, but not all, comments are addressed in the preamble to this final rule.

The Medicaid Eligibility proposed rule proposed to amend 42 CFR parts 431, 435, and 457 to implement an eligibility, enrollment, and renewal system required by the Affordable Care Act. We proposed amendments to 42 CFR part 435 subparts B and C to implement the changes to Medicaid eligibility. We proposed amendments to subpart A to add new definitions or revise current definitions.

Under our proposed amendments to 42 CFR part 435 subpart G, most individuals would have financial eligibility for Medicaid determined based on MAGI. The proposed regulations also defined the new MAGI-based financial methodologies and identified individuals whose eligibility would not be based on MAGI. Subpart E included proposed eligibility requirements regarding residency.

Proposed amendments to subpart J established Federal guidelines for States to establish a seamless and coordinated system for determining eligibility and enrolling in the appropriate insurance affordability program. Subpart M delineates the responsibilities of the State Medicaid agency in the coordinated system of eligibility and enrollment established under the Affordable Care Act, and proposed

comparable amendments for CHIP at 42 CFR part 457.

We proposed to amend 42 CFR part 433 to add new provisions at § 433.10(c) to specify options for establishing the increased Federal Medicaid matching rates available to States under the Affordable Care Act; these amendments will be finalized in future rulemaking. A number of other provisions in the Affordable Care Act were not included in the Medicaid Eligibility proposed rule, but either have been or will be addressed in separate rulemaking or other guidance.

Responses to General Comments

Generally, comments were supportive of the policies in the Medicaid Eligibility proposed rule to simplify, streamline, and align the eligibility and enrollment process, coordinate with other insurance affordability programs, reduce or eliminate burdensome requirements on States, and build on successful State practices that are currently underway. Throughout this rule, we summarize comments received that pertain to this rule: comments on policies not contained in this rule are not addressed.

Comment: We received several comments (nearly half of all comments received) raising concerns about coverage of individuals with disabilities or in need of long-term services and supports under the new eligibility group for low-income adults.

Response: We acknowledge and have responded to these concerns as discussed in detail in sections III.B. and III.E. of this preamble and at § 435.603 and § 435.911 of the regulation text.

Comment: We received some comments, questions, and scenarios related to how States will operationalize the policy changes to Medicaid and CHIP that were set forth in the Medicaid Eligibility proposed rule.

Response: As we have done in these regulations, we plan to rely on and build upon State experience with implementing new policies and program changes as a means of ensuring a successful partnership between the States and the Federal government. We also intend to provide intensive technical assistance and support to States, as well as facilitate sharing and collaboration across States as implementation continues. The public comments received will inform the development of future operational guidance and tools that will be designed to support State implementation efforts.

The effective date for this final rule is January 1, 2014. However, it should be noted that States may, and are encouraged to, conduct activities in preparation for the policy and programmatic changes that will need to take place in order to implement the provisions of this final rule. Federal administrative matching funds will be available for such activities.

Comment: Some commenters requested additional information for the data reporting requirements for States to ensure adequate oversight of the administration of the program.

Response: Under existing Medicaid regulations at § 431.16, § 431.17, and § 457.720, States must maintain records, collect data and submit to the Secretary such reports as are needed by the Secretary to monitor State compliance with the regulations and ensure the proper and efficient operation of the Medicaid program. In the Medicaid Eligibility proposed rule, as well as this final rule, we have noted several types of data that States will need to provide, including data to ensure compliance with single State agency regulations at § 431.10, and we will issue guidance on the specific data to be submitted, as well as the format and method for such submission.

Comment: We received some comments regarding the need for program integrity and Payment Error Rate Measurement (PERM) rules to be clarified and aligned with the policies in the proposed rules.

Response: We agree that PERM and other program integrity rules and procedures must be aligned with the new eligibility rules, and also must account for the role that Exchanges may play in determining eligibility in a particular State. We will address these issues in subsequent guidance.

A. Changes to Medicaid Eligibility

To establish a foundation for a more simplified, streamlined Medicaid eligibility process in the context of the new eligibility group for low-income adults that will become effective in 2014, we proposed a more straightforward structure of four major eligibility groups: children, pregnant women, parents and caretaker relatives, and the new adult group.

1. Coverage for Individuals Age 19 or Older and Under Age 65 at or Below 133 Percent of the FPL (§ 435.119)

We proposed to implement section 1902(a)(10)(A)(i)(VIII) of the Act, referred to as ''the adult group,'' under which States will provide Medicaid coverage starting on January 1, 2014 to non-pregnant individuals between 19 and 64 years old who are not otherwise eligible and enrolled for mandatory Medicaid coverage; are not entitled to or enrolled in Medicare; and have household income, based on the new MAGI-based methods (described in more detail in 76 FR 51155 through 51160), at or below 133 percent of the FPL.

Comment: One commenter requested clarification of the requirement at § 435.119(c) that a parent or other caretaker relative living with a dependent child may not be covered by Medicaid under the adult group if the child is not enrolled in Medicaid, CHIP, or other minimum essential coverage. The commenter was uncertain whether this requirement applies to a custodial parent when the child is claimed as a tax dependent by the non-custodial parent and to a non-custodial parent who is required to pay for all, or part, of the child's medical support. Several commenters pointed out the difficulty and unfairness of applying this requirement to a parent in custody situations if the other parent is legally responsible for the child's medical support. Also, the commenters pointed out the difficulty in applying the requirement to a non-parent caretaker relative who is not financially responsible for the child. Another commenter recommended that the requirement be revised to include an exception to the prohibition on coverage for parents and caretaker relatives if an application for a child's coverage is pending. Finally, other commenters were unclear about the eligibility groups to which this requirement applies.

Response: We are finalizing § 435.119(c) without modification. We believe the requirements for coverage of parents and other caretaker relatives under § 435.119 and § 435.218 are clear and consistent with the statutory requirements at sections 1902(k)(3) and 1902(hh)(2) of the Act. The requirements are limited to custodial parents and other caretaker relatives who live with dependent children, because non-custodial parents are not taken into account in determining a child's Medicaid eligibility according to § 435.603 of this final rule. We do not provide an exemption from the requirement if an application for a child's coverage is pending because if a child's pending application is denied for all insurance affordability programs or the parent or caretaker relative fails to enroll the child in such program, the child must be enrolled in other minimum essential coverage for the custodial parent or other caretaker relative to be covered by Medicaid under the § 435.119 or § 435.218. In virtually all cases, if the parent or other caretaker relative is eligible for Medicaid, the child also will be eligible for Medicaid, and the adjudication of

eligibility for the child should not delay the eligibility determination for the parent or caretaker relative.

Comment: Numerous commenters expressed concern about the placement of disabled individuals and individuals needing long-term services and supports in the adult group, because individuals under the adult group will receive a benchmark benefit package that might not cover institutional services, home and community-based services, or other specialized services available under certain optional eligibility groups.

Response: We agree with the commenters' concerns. As discussed further in section III.F. of this preamble, we have revised the policy in § 435.911 of this final rule to address the needs of this population consistent with the statute.

2. Individuals With MAGI-Based Income Above 133 Percent of the FPL (§ 435.218)

We proposed at § 435.218 to implement section 1902(a)(10)(A)(ii)(XX) of the Act that gives States the option, starting on January 1, 2014, to provide Medicaid coverage to individuals under age 65 (including pregnant women and children) with income determined based on MAGI to be above 133 percent of the FPL. We proposed to establish this optional eligibility group for individuals who are not eligible for and enrolled in an eligibility group under section 1902(a)(10)(A)(i) of the Act and 42 CFR part 435 subpart B or under section 1902(a)(10)(A)(ii)(I) through (XIX) of the Act and 42 CFR part 435 subpart C; and have household income based on MAGI that exceeds 133 percent of the FPL but does not exceed the income standard established by the State for coverage of this optional group.

Comment: Several commenters recommended that we revise proposed § 435.218 to provide that an individual who appears, based on information provided on the application, to be eligible for Medicaid as medically needy or as a spend down beneficiary in a 209(b) State may be enrolled in the optional group under this section. Another commenter recommended that an individual enrolled in an optional Medicaid group that does not provide minimum essential coverage should not be prohibited from enrollment in the group under § 435.218, which provides full Medicaid benefits.

Response: We believe the rule is clear that only individuals eligible and enrolled as categorically needy for coverage are excluded from coverage under this section. The provision does not apply to individuals potentially eligible as medically needy under section 1902(a)(10)(C) of the Act or as spend down beneficiaries in a 209(b) State eligible under section 1902(f) of the Act. However, we are revising the final rule to specify sections 1902(a)(10)(A)(ii)(I) through (XIX) of the Act as statutory citations for the optional groups related to this requirement, because individuals eligible for the optional family planning group under section 1902(a)(10)(A)(ii)(XXI) of the Act are not excluded from enrollment under the new optional eligibility group at § 435.218. The determination as to whether this coverage constitutes minimum essential coverage is governed by section 5000A of the Code, and the determination as to when an individual is considered eligible for minimum essential coverage is governed by section 36B(c)(2)(b).

Comment: Several commenters requested that we clarify the intended Federal financial participation (FFP) rate for this optional coverage group and whether the enhanced Federal medical assistance percentage (FMAP) rates specified in proposed § 433.10 apply.

Response: As discussed in section III.O. of this preamble, the enhanced FMAP for ''newly eligible'' individuals under section 1905(y) of the Act, as added by section 2001 of the Affordable Care Act, is only available for individuals covered under the new adult group. However, enhanced FMAP rates under CHIP specified at § 433.11 may apply for children younger than age 19 covered under § 435.218 who meet the definition of optional targeted low-income child at § 435.4.

3. Simplified Eligibility Rules for Parents and Caretaker Relatives, Pregnant Women, and Children—Amendments to Part 435, Subpart B (§ 435.110, § 435.116, and § 435.118)

We proposed to streamline and simplify current regulations governing Medicaid eligibility for children, pregnant women, parents, and other caretaker relatives whose financial eligibility, beginning in CY 2014, will be based on MAGI. Consistent with section 1902(a)(19) of the Act, we proposed to simplify and consolidate certain existing mandatory and optional eligibility groups into three categories: (1) Parents and other caretaker relatives (§ 435.110); (2) pregnant women (§ 435.116); and (3) children (§ 435.118). The Medicaid Eligibility proposed rule (76 FR 51152 through 51155) provided a detailed description of the proposed consolidation and explained how certain mandatory and optional groups in current regulations would be moved into the new broader groups for parents and other caretaker relatives, pregnant women, and children under age 19.

Comment: Many commenters supported the proposal. A few commenters recommended that CMS consolidate eligibility categories beyond what was already proposed in this regulation. One commenter suggested having one eligibility group for all individuals with MAGI-based income up to 133 percent of the FPL, one for individuals with MAGI-based income above 133 percent of the FPL, and another for the MAGI-exempt populations. Another recommended eliminating the proposed minimum and maximum income standards and requiring a common income standard of 133 percent of the FPL for parents and other caretaker relatives at § 435.110, pregnant women at § 435.116, and children under age 19 at § 435.118. One commenter stated that nothing about the proposed structure can credibly be described as simplified because it maintains all the old categorical and optional eligibility groups and standards in addition to an entirely new array of ''simplified'' eligibility groupings.

Response: We will consider future rulemaking or issuance of guidance to address further simplification of Medicaid eligibility groups not addressed in this rule. We do not have the statutory authority to eliminate the maximum permissible income standards specified for each eligibility group in this final rule, nor do we think it would be appropriate to eliminate State flexibility to cover each of these groups at a higher income standard up to the maximum permitted.

Comment: Some commenters questioned whether guidance will be issued for the new eligibility group for former foster care children and for the new options of presumptive eligibility provided by the Affordable Care Act starting on January 1, 2014. The commenters also questioned whether certain existing Medicaid mandatory and optional coverage and eligibility groups will remain after January 1, 2014 such as Transitional Medical Assistance; deemed newborn eligibility; optional coverage for parents and other caretaker relatives; women needing treatment for breast or cervical cancer; non-IV–E State subsidized adoption children; continuous eligibility for children; and presumptive eligibility for children and pregnant women.

Response: The Affordable Care Act did not eliminate or change the requirements of existing Medicaid eligibility groups, except to require the use of MAGI-based financial methodologies for the populations

included under MAGI. These eligibility categories and coverage options, as well as the other new eligibility pathways created by the Affordable Care Act will be addressed in future guidance.

Comment: Several commenters questioned whether there is any reason to keep medically needy coverage for Aid to Families of Dependent Children (AFDC) related populations and stated that this is especially a problem because States must cover pregnant women and children under age 18 as medically needy to cover the aged, blind, or disabled (ABD) populations as medically needy. Some commenters were concerned that eligibility for medically needy coverage under Medicaid would preclude eligibility for the advance payments of premium tax credits (APTCs) through the Exchange. Another commenter stated that States should have the option to provide medically needy coverage under section 1902(a)(10)(C) of the Act and 42 CFR part 435 subpart D for the population of adults described in paragraph (xiv) of the matter preceding sections 1905(a) and 1902(a)(10)(A)(i)(VIII) of the Act.

Response: The Affordable Care Act did not change any current requirements for medically needy eligibility under section 1902(a)(10)(C) of the Act, including the requirement that States covering medically needy individuals must cover medically needy pregnant women and children under age 18. However, by expanding coverage to adults under age 65, the Affordable Care Act also provides States with the option to cover as medically needy those adults under age 65 who have incomes above the Medicaid income levels but otherwise meet the eligibility requirements of the adult group or the optional group for individuals with income over 133 percent of the FPL, provided that they meet spend-down requirements. Individuals otherwise eligible for APTCs through the Exchange who can spend down to medically needy eligibility under Medicaid could potentially enroll in either program, depending on whether they elect to spend down to Medicaid eligibility as medically needy. Individuals who do not spend down to Medicaid eligibility may be eligible to receive APTCs for enrollment through the Exchange.

Comment: Many commenters disagreed with the policy in the Medicaid Eligibility proposed rule that States will not be required to convert the statutory minimum income standards set forth in sections 1931 and 1902(l) of the Act for coverage under § 435.110(c)(1), § 435.116(c)(1) and (d)(4)(i), and § 435.118(c)(1) to a MAGI-equivalent standard, to account for disregards and exclusions currently used by the State that are not permitted under MAGI. The commenters stated that some individuals would lose eligibility if a State lowers its income standard for a group to the minimum once the maintenance of effort requirement ends for that population; for others, the scope of benefits could be reduced. Several commenters requested clarification about the conversion of States' income standards to MAGI-equivalent standards and whether income conversion applies for the eligibility groups exempt from MAGI.

Response: We are not revising the final rule to require MAGI conversion of the statutory minimum income standards for each eligibility group, to which a State may reduce its income standard once maintenance of effort ends. Section 1902(e)(14)(A) and (E) of the Act, as added by section 2002 of the Affordable Care Act, provides only for the conversion of the income standards in effect in the State prior to the Affordable Care Act. The Act does not provide for conversion of the Federal statutory minimum income standards. Further, by raising the statutory minimum standard for children ages 6 to 18 to 133 percent of the FPL under section 1902(a)(10)(A)(i)(VII) of the Act, according to section 2001 of the Affordable Care Act, we believe the Congress indicated an intent to align the minimum statutory standards for all age groups of children at 133 percent of the FPL, along with adults under age 65. Since the statutory increase in the minimum standard for older children would not be converted from MAGI, conversion of the minimum standards for younger children would defeat such alignment and result in children in the same family potentially being eligible for different insurance affordability programs depending on their age. (The only exception to complete alignment would be for infants and pregnant women, in States required to cover pregnant women and infants at a higher income standard under section 1902(l)(2)(A) of the Act.) We note that the potential for a State to reduce its income standard for a children's eligibility group to the minimum standard permitted under statute will not occur until the maintenance of effort for children ends on October 1, 2019, in accordance with section 1902(gg) of the Act as added by section 2001 of the Affordable Care Act. In States that reduce coverage of parents and caretaker relatives under § 435.110 to the minimum permitted under statute, the affected individuals may be eligible under the new adult group. Pregnant women affected by a reduction of coverage to the minimum permitted may be eligible for APTC for enrollment through the Exchange.

a. Parents and Other Caretaker Relatives (§ 435.110)

Comment: One commenter stated that CMS should provide clarifying information on how the ''1931 program'' should be administered through both MAGI and AFDC rules.

Response: The rules for Medicaid coverage under section 1931 of the Act are set forth in § 435.110 and the related definitions of ''caretaker relative'' and ''dependent child'' at § 435.4. AFDC methodologies for determining financial eligibility under section 1931 will be superseded effective January 1, 2014 by methodologies based on MAGI (set forth in § 435.603), and therefore, no longer will be relevant to eligibility under section 1931 of the Act.

b. Pregnant Women (§ 435.116)

Comment: Many commenters urged that we revise proposed § 435.116(d) to eliminate the State option to establish an applicable income limit for full Medicaid coverage of pregnant women and only cover services related to pregnancy or to other conditions which may complicate pregnancy (hereinafter referred to as ''pregnancy-related services'') for pregnant women with income above that limit. The commenters recommended that we not permit each State to define pregnancy-related services, but that we amend § 440.210(a)(2) to broadly define ''pregnancy-related services'' as full Medicaid coverage. The commenters noted that this would be consistent with the current practice in most States. Commenters stated that, otherwise, pregnant women with incomes above that limit but with income no more than 133 percent of the FPL might be covered for lesser benefits than non-pregnant adults covered under the adult group at § 435.119, from which pregnant women are excluded by statute. These commenters stated that the Congress did not intend to make low-income pregnant women eligible for a more limited scope of benefits than other adults with the same income.

Response: Clause VII in the matter following section 1902(a)(10) of the Act expressly limits the medical assistance for which pregnant women are eligible under sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act to pregnancy-related services. Eligibility for all pregnant women—including those eligible under these sections, as well as sections 1931 and 1902(a)(10)(A)(i)(III) of the Act—is

codified at § 435.116. Pregnant women with income no more than the applicable income limit for full Medicaid coverage defined in § 435.116(d)(4) are eligible under section 1931 or 1902(a)(10)(A)(i)(III) of the Act, while those with income above such limit are eligible under section 1902(a)(10)(A)(i)(IV) or 1902(a)(10)(A)(ii)(IX) of the Act. While we appreciate the commenters' concern, we do not have the authority to specifically require that pregnancy-related services be considered to mean full Medicaid coverage. However, because it is difficult to identify what is ''pregnancy-related'' and because the health of a pregnant woman is intertwined with the health of her expected child, the scope of such services is necessarily comprehensive, as reflected in current regulation at § 440.210(a)(2). Therefore, we are revising § 435.116(d)(3) to clarify that a State's coverage of pregnancy-related services must be consistent with § 440.210(a)(2) and § 440.250(p), which allows States to provide additional services related to pregnancy to pregnant women. If a State proposes not to cover certain services or items for pregnant women that it covers for other adults, the State must describe in a State plan amendment for the Secretary's approval its basis for determining that such services are not pregnancy-related.

Comment: One commenter supported the elimination of the ''third trimester rule,'' which permitted States to deny full-scope Medicaid to pregnant women in the first or second trimester of pregnancy who have no dependent children, for pregnant women's eligibility under section 1931 of the Act.

Response: States have the option under section 1931 of the Act (in accordance with section 406(g)(2) of the Act as in effect prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)) to provide full Medicaid coverage for pregnant women with no dependent children during the third trimester of pregnancy. States are required to cover ''qualified pregnant women'' during all trimesters of pregnancy for full Medicaid benefits, in accordance with sections 1902(a)(10)(A)(i)(III) and 1905(n) of the Act, if they meet the statutory minimum income and resource requirements or more liberal methodologies implemented by the State for this group under section 1902(r)(2) of the Act. These coverage requirements are incorporated into the consolidated group for pregnant women at § 435.116.

Comment: Several commenters raised a question about whether a woman covered under the adult group must be transferred to coverage under § 435.116 when she becomes pregnant, and whether, when the post-partum period ends, the woman would then be transferred back to coverage under the adult group. Commenters were concerned that this could result in lesser coverage at a time when the woman is more vulnerable. Also, these commenters were concerned that this transferring back and forth could impact continuity and quality of care and the receipt of medically necessary services during pregnancy.

Response: While continuity is important, States are not required to monitor the pregnancy status of women covered under the adult group. However, women should be informed, in accordance with § 435.905 related to the availability of program information discussed later in this preamble at section III.E.1, of the benefits afforded to pregnant women under the State's program. If a woman becomes pregnant and requests a change in coverage category, the State must make the change if she is eligible. But, we will not otherwise expect States to monitor pregnancy status and to shift women into the group for pregnant women once they become pregnant.

c. Infants and Children Under Age 19 (§ 435.118)

Comment: Many commenters supported the expanded minimum income standard for children aged 6 through 18 from 100 to 133 percent of the FPL. The commenters also supported States' ability to continue to claim enhanced match from their CHIP allotment for children transferred from a separate CHIP to Medicaid as a result of this Medicaid expansion. One commenter expressed concern about quality, access, and continuity of care when children are moved from coverage under a separate CHIP to coverage under Medicaid, and proposed that children be allowed to remain with their medical home rather than being shifted from one program to another.

Response: States may claim enhanced match from their CHIP allotment for children who meet the definition of an ''optional targeted low-income child'' at § 435.4 and become eligible for Medicaid as a result of the amendment of section 1902(1)(2)(C) of the Act to increase the income standard for mandatory coverage of children aged 6 through 18 under section 1902(a)(10)(A)(i)(VII) of the Act from 100 to 133 percent of the FPL.

4. Other Conforming Changes to Existing Regulations (§ 435.4)

We proposed several definitions specific to the Medicaid eligibility changes under the Affordable Care Act (listed in more detail in 76 FR 51155) and received the following comments.

Comment: One commenter recommended that the definition of ''Affordable Insurance Exchanges (Exchanges)'' be revised to include a ''quasi-governmental agency.'' Another commenter recommended that the definition be revised to include an ''individual market Exchange'' and a ''SHOP Exchange,'' and that ''refer'' be changed to ''may refer'' because some references to an Exchange just refer to certain types of Exchanges.

Response: The definition of ''Exchange'' is outside the scope of the Medicaid regulations and governed by the Exchange regulations. Therefore, we are revising the definition of ''Affordable Insurance Exchanges (Exchanges)'' in this final rule to reference the definition of ''Exchange'' in 45 CFR 155.20 of the final Exchange regulation. We are making a similar revision to the definition of ''advance payment of the premium tax credit (APTC).''

Comment: One commenter recommended that the definition of ''caretaker relative'' include the domestic partner of a child's parent or other caretaker relative, and also a parent or relative standing ''in loco parentis.'' Another commenter pointed out that, under the AFDC rules, a caretaker relative had to be a certain degree of relationship to a dependent child.

Response: States should have the option to consider the domestic partner of a child's parent or relative as a ''caretaker relative'' of a dependent child. We are also revising the final rule to offer States the option to consider any adult with whom a child is living and who assumes primary responsibility for the dependent child's care to be a caretaker relative. However, since caretaker relatives are, in essence, standing in the shoes of a parent to assume primary responsibility to care for a child, we do not see the need to add a reference to relatives standing ''in loco parentis.'' Moreover, the term ''in loco parentis'' could be read overly broadly to include relatives who have only temporary or fleeting custody of the child (such as in the provision of day care or babysitting). We are also revising the definition of ''caretaker relative'' in this final rule to specify the degrees for relationship of relatives, for consistency with current policy based

on section 406(a) of the Act, as in effect prior to enactment of PRWORA. However, we have revised the regulation text to provide States with the option to expand the definition of caretaker relatives to cover additional degrees of relationship to a dependent child.

Comment: Many commenters supported the codification of the definition of ''dependent child,'' including the State option either to eliminate the ''deprivation'' requirement altogether or to establish a higher number of working hours as the threshold for determining unemployment if deprivation is considered. One commenter pointed out that the definition omitted a parent's physical or mental incapacity as a reason for a child to be considered ''deprived'' of parental support and so ''dependent.'' Another commenter expressed concern that the proposed definition of ''dependent child'' would change the longstanding option for States to include as ''dependent children'' 18-year olds who are full-time students to a requirement.

Response: We unintentionally omitted a parent's physical or mental incapacity as a reason for a child to be considered ''deprived'' of parental support, and are adding this to the definition of ''dependent child'' for consistency with 45 CFR 233.90(c)(i), as required by section 1931(b) of the Act. We also revised the final rule to clarify that the 18-year old full-time students included as ''dependent children'' at § 435.4 are those in a secondary school (or equivalent level of vocational or technical training), consistent with the definition of ''dependent child'' in section 406(a) of the Act, as in effect prior to passage of PRWORA. Also, we revised the final rule to clarify that coverage of 18-year old full-time students as ''dependent children'' is a State option, rather than a requirement, consistent with current policy.

Comment: One commenter recommended that the definition of ''insurance affordability program'' be amended to include the Medicare Part D Low Income Subsidy (LIS) program.

Response: The definition of ''insurance affordability program'' mirrors the definition of ''applicable State health subsidy program'' in section 1413(e) of the Affordable Care Act and is limited to the programs included by statute in the streamlined eligibility and enrollment system required by the Affordable Care Act, eligibility for which can be determined based on MAGI. The LIS program does not meet this definition.

Comment: Several commenters stated that the definition and application of the term ''minimum essential coverage'' are unclear. The commenters questioned whether an individual who is covered by Medicaid for limited benefits is considered enrolled in minimum essential coverage and so is ineligible for subsidized full benefits from the Exchange. Commenters pointed to several situations in which Medicaid-eligible individuals receive a limited benefit package including: pregnant women eligible for pregnancy-related services only (if the State does not cover all State plan benefits as pregnancy-related); individuals eligible under the State plan or a waiver for family planning services; individuals eligible under section 1902(a)(10)(A)(ii)(XII) of the Act for tuberculosis-related services only; and certain immigrants who are eligible only for emergency medical services. The commenters recommended that CMS clarify that limited-benefit coverage under Medicaid is not considered ''minimum essential coverage,'' so that individuals would be permitted to receive APTCs to enroll in a qualified health plan (QHP) through the Exchange. For individuals who so choose, commenters suggested that Medicaid would serve as a secondary payer to the Exchange plan.

Response: We do not have authority to define ''minimum essential coverage,'' which is defined in section 5000A(f) of the Internal Revenue Service (IRS) Code (IRC) and is subject to implementing regulations issued by the Secretary of the Treasury, as referenced in the definition at § 435.4. Providing further guidance on the meaning of this term is beyond the scope of this rule, but will be addressed by the Secretary of the Treasury in future guidance. However, we affirm that to the extent that an individual is enrolled in any insurance plan, including an Exchange plan, Medicaid would be a secondary payer. No change has been made to section 1902(a)(25) of the Act, which provides generally that Medicaid pays secondary to legally liable third parties.

Comment: Several commenters recommended that we drop the word ''properly'' from the definition of ''tax dependent'' because the agency cannot and should not determine whether an individual is or will be properly claimed as a tax dependent for tax purposes. The commenters noted that only the IRS can make such a determination.

Response: We made this revision in the final rule to drop the word ''properly'' from the definition of ''tax dependent.'' Also, we revised the definition to reference both sections 151 and 152 of the IRC.

B. Financial Methodologies for Determining Medicaid Eligibility Based on MAGI Under the Affordable Care Act (§ 435.603)

In the Medicaid Eligibility proposed rule, we set forth proposed methodologies to implement MAGI in determining financial eligibility for Medicaid for most individuals effective January 1, 2014. Consistent with section 1902(e)(14) of the Act, our proposed methodologies codify the definition of MAGI and household income in section 36B of the IRC (''36B definitions''), except in a limited number of situations.

We received the following comments concerning the proposed provisions for determining financial eligibility based on MAGI methods. We also received many questions from commenters asking how MAGI applies in specific scenarios. We will continue to provide information and assistance for such scenarios as we work with States to implement these final regulations.

1. Basis, Scope, and Implementation (§ 435.603(a))

Comment: Some commenters suggested that the final regulation should permit a State to convert its current income levels for eligibility groups to which MAGI-based methodologies do not apply to a MAGI-equivalent threshold using a process that is the same as or similar to that provided under section 1902(e)(14)(A) and (E) of the Act for groups to which MAGI-based methodologies will apply. Commenters were concerned that States would have to maintain two eligibility systems, but would not receive Federal funds to maintain the necessary legacy systems.

Response: We do not have the statutory authority to permit States to apply MAGI-based methodologies and convert current income standards to equivalent MAGI-based standards for MAGI-excepted individuals and eligibility groups described under section 1902(e)(14)(D) of the Act. However, if a State is able to demonstrate that application of MAGI-based methods to an income standard converted for such methods is less restrictive than the methodologies and standard otherwise applied, a State may be able to accomplish the goal sought by the commenters by proposing a State plan amendment in accordance with section 1902(r)(2) of the Act. Alternatively, a State could seek to convert standards for MAGI-excepted groups to MAGI-based methods through a demonstration under section 1115 of

the Act. We are available to work with any State interested in exploring this possibility.

We do not believe States will need to maintain two eligibility systems, even with the different income methodologies for the MAGI and non-MAGI populations, nor will Federal matching funds be available to operate two eligibility systems. We note that State eligibility systems currently must support eligibility categories using different financial methodologies, based on the rules applied under either the AFDC or Supplemental Security Income (SSI) programs. Enhanced funding is available to States to develop, design, and maintain eligibility systems supporting the full range of eligibility categories, as long as certain conditions and standards ensuring high performance are met. States can also use the enhanced funding to transform their eligibility systems in phases, since 90/10 match is available through the end of CY 2015 for design and development activities. Legacy systems unable to meet those conditions and standards are still eligible for a 50/50 match.

Comment: Many commenters recommended that current beneficiaries be converted to MAGI as of their first redetermination on or after January 1, 2014, so that everyone's eligibility would not have to be redetermined as of January 1, 2014 to see if the grace period applies, which would place an enormous burden on States.

Response: Section 1902(e)(14)(D)(v) of the Act, as added by section 2002 of the Affordable Care Act, provides for a temporary grandfathering of coverage for beneficiaries who are enrolled in Medicaid on January 1, 2014 and would lose eligibility due to the application of MAGI-based methodologies prior to March 31, 2014 or their next regularly-scheduled renewal, whichever is later. We proposed this provision in the Medicaid Eligibility proposed rule at § 435.603(a)(3); however, we are deleting in the final rule the phrase in the Medicaid Eligibility proposed rule that provides for the delay of the application of MAGI-based methodologies to current beneficiaries ''if the individual otherwise would lose eligibility as the result of the application of these methods,'' as we believe that this phrase is unnecessary and may be the source of the commenters' concern. We revised § 435.603(a)(3) in the final rule to clarify that MAGI-based methodologies will not be applied to current beneficiaries who were determined eligible for Medicaid on or before December 31, 2013 until March 31, 2014 or the next regularly-scheduled renewal of eligibility for such individual under § 435.916, whichever is later. However, according to § 435.603(a)(2), MAGI will be applied to individuals whose eligibility for Medicaid is determined effective on or after January 1, 2014.

2. Definitions (§ 435.603(b))

Comment: Many commenters recommended that, in the case of a pregnant woman expecting more than one child, States be required to count each expected child in determining family size when making an eligibility determination for a pregnant woman, as well as when determining eligibility for other household members. A few other commenters recommended that States be provided with the option to count each expected child, especially for the family size of other household members.

Response: Our intent was to codify current Medicaid policy for household size for pregnant women, but the Medicaid Eligibility proposed rule did not accomplish this intent. Therefore, we are revising the definition of ''family size'' in § 435.603(b) to be consistent with current policy, as intended. Under the final rule, for the purpose of determining a pregnant woman's eligibility, family size will reflect the pregnant woman plus the number of children the woman is expecting. For the family size of other individuals in the pregnant woman's household, States will have the option to count the pregnant woman as either one or two persons or to count her as one person plus each expected child, if more than one.

3. Financial Methodologies Based on MAGI § 435.603(c) Through (i)

Comment: Many commenters believed that, in attempting to strike the proper balance between using 36B policies and current Medicaid policies, the Medicaid Eligibility proposed rule is too complex. Others supported the exceptions from 36B definitions provided in the Medicaid Eligibility proposed rule—including the treatment of certain types of income and the treatment of individuals claimed as qualifying relatives by someone other than a parent or spouse, children claimed as a tax dependent by a non-custodial parent, and spouses who do not file a joint tax return—but believed that we should go further to retain current Medicaid principles in all instances. Some commenters expressed concern about the impact of using the 36B definitions on States' budgets because the 36B definitions are more generous in the treatment of several types of income from the perspective of individuals seeking eligibility as compared to current Medicaid methods. Other commenters stated that we are not justified in deviating from the 36B definitions, and that the rule should be simplified by adopting the 36B definitions without exception. One commenter stated that the proposed regulations violate a clear Congressional mandate at section 1902(e)(14) of the Act to use MAGI as defined by the IRC for determining Medicaid and CHIP eligibility. Several commenters recommended that CMS first apply the 36B definitions and then apply current Medicaid rules if the individual is ineligible based on the 36B definitions, or give individuals a choice as to which rules are applied.

Response: After consideration of all of these comments, we are not modifying our policy. As explained in the Medicaid Eligibility proposed rule (76 FR 51155 through 51159), eligibility for most individuals for Medicaid, as well as for APTCs, is based in the statute on the 36B definitions and we do not have flexibility to retain current Medicaid rules across the board. While there are some modest differences between the 36B definitions and the MAGI-based household and income counting rules adopted for Medicaid, due to statutory requirements at section 1902(e)(14)(H) of the Act for continued application of Medicaid rules regarding point-in-time income and sources of income, the rules adopted are for the most part fully consistent with the 36B definitions and we believe that overall, simplicity has been achieved relative to current Medicaid household and income counting rules. Where there are differences, we believe that they can be handled without compromising seamless coordination. We believe that by using targeted solicitation of information and computer programming tools, States can implement these requirements efficiently. We will work closely with States to provide technical assistance on this and other issues as we work together to implement this final rule.

Comment: Many commenters expressed concern about potential gaps in coverage due to application of different MAGI-based methods for determining financial eligibility for Medicaid and APTCs for enrollment through the Exchange. Several commenters recommended a ''safe harbor'' to ensure coverage in Medicaid for individuals who otherwise would fall into a coverage gap because their household income based on the MAGI-based methodologies in § 435.603 is above the applicable Medicaid income standard, but household income based on the 36B definition of MAGI and

household income is below the floor of 100 percent of the FPL for APTC eligibility.

Response: We believe that such potential coverage gaps will be rare, but agree that eliminating any potential gap is important. Therefore, we are redesignating proposed paragraph (i) of § 435.603 to paragraph (j) in this final rule and are adding a new paragraph (i) to provide that States apply the 36B definitions in the situation described above.

Comment: Several commenters questioned how States or applicants can be expected to determine and verify prospectively for the current calendar year who will file for taxes, what dependents will be claimed, and whether children or other tax dependents will be required to file a tax return. Commenters pointed out that such determinations may affect eligibility and questioned whether the State needs to verify whether an individual is properly claiming someone as a dependent or whether an individual must file taxes; if so, the commenters were concerned that this would interfere with the IRS's authority. Several commenters stated that such attestations would be prone to fraud, abuse, and error. One commenter expressed concern about a State's potential liability when making Medicaid determinations regarding tax dependency that is later proved wrong when the individual files his or her tax return.

Response: As with other factors of eligibility, States must make their best determination as to whether an individual's attestation or statement regarding the tax dependency status of another individual is reasonable, based on the information available at the time. However, there may be circumstances in which such status cannot be reasonably ascertained. We have added a new paragraph (f)(5) in § 435.603 to provide that when a taxpayer cannot, consistent with the procedures adopted by the State in accordance with § 435.956(f), reasonably establish that another individual will be a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of the other individual in the household of the taxpayer is determined in accordance with the rules for non-filers set forth in paragraph (f)(3) of § 435.603. Finally, the PERM program, which identifies improper payments, measures the accuracy of the agency's determinations based on the information available to the agency at the time the determination is made, not based on information that only becomes available at a later date, when the taxpayer actually files his or her tax return. We will be working to ensure that all PERM rules and instructions conform to this principle and will issue additional guidance for States as needed.

4. Household Income (§ 435.603(d))

Comment: Several commenters recommended using current Medicaid policies for determining whether a child's income is counted, rather than requiring the applicant and the agency to determine whether a minor or adult child who is included in the parent's household will be required to file taxes for the current calendar year. The commenters questioned how States can determine prospectively whether an individual will earn enough during the year for which eligibility is being determined to be required to file a tax return.

Response: Except in cases where the statute provides for use of a different rule for Medicaid, we must apply the 36B rules for household income when States determine Medicaid financial eligibility for MAGI-included populations. The statute calls for reliance on the 36B household definition. We have clarified the regulation text at § 435.603(d)(2)(i) to provide that the income of a child included in his or her parent's household is not counted if the child is not expected to be required to file a tax return for the year in which coverage is sought. We expect that States will be able to make a reasonable determination as to whether an individual will be expected to be required to file a tax return, based on the individual's current income for the applicable budget period (current monthly income for applicants; current monthly, or projected annual income for beneficiaries if the State exercised the option provided at § 435.603(h)(2)). Such determinations would be based on information available at the time of application and renewal, not based on information only available at a later date, and States will not be held accountable for reasonable determinations made at the time of the determination, even if later proven wrong. Filing requirements are contained in section 6102 of the IRC and are discussed in IRS Publication 501.

However, we are revising § 435.603(d)(2) to make a technical correction in the language so as to implement the intent behind the proposed regulation to clarify when the income of tax dependents is and is not counted in total household income. Specifically, we are redesignating § 435.603(d)(2) of the Medicaid Eligibility proposed rule at paragraph (d)(2)(i) of this final rule and adding language at § 435.603(d)(2)(ii) to clarify that the income of tax dependents other than the taxpayer's children also is not counted in determining household income of the taxpayer if such dependent is not expected to be required to file a tax return. The income of such tax dependents, who are described in § 435.603(f)(2)(i), is counted in determining the tax dependent's household income. For example, consider Taxpayer Joe, an adult (not himself claimed as a tax dependent) who claims his Uncle Harry as a tax dependent. Harry is not expected to be required to file a tax return. Consistent with the 36B definitions, Harry is included in Joe's family size for purposes of Joe's eligibility per § 435.603(f)(1), but Harry's income is not counted in Joe's household income under § 435.603(d)(2)(ii). Under § 435.603(f)(2)(i) and (f)(3) of our regulations, Harry will be considered for Medicaid eligibility as a separate household, and under § 435.603(d)(1), Harry's income will be counted in determining his own eligibility.

Comment: Many commenters supported the exception at § 435.603(f)(2)(i) to the use of 36B definitions for individuals claimed as a tax dependent by someone other than a parent or spouse, and the application of the household composition rules for non-filers in determining such individuals' eligibility. However, some of the commenters opposed inclusion of the requirement at § 435.603(d)(3) to count as household income for such individuals any actually available cash support received from a taxpayer who claims the individual as a tax dependent. Several commenters stated that this policy would be difficult to implement and that obtaining and verifying information about such support would interfere with real-time eligibility determinations, while not making much of a difference in the eligibility result. One commenter suggested counting such support only if it exceeds a certain amount, but not counting insignificant sums.

Response: After considering the comments received, we are revising this provision in the final rule to make it a State option, rather than a requirement, to count actually available cash support, exceeding nominal amounts, provided by a taxpayer to a tax dependent in determining the latter's eligibility.

5. MAGI-Based Income (§ 435.603(e))

Comment: In the Medicaid Eligibility proposed rule (76 FR 51157), we proposed income counting rules at § 435.603(e) that are, in general, the

same as the section 36B definitions, to ensure streamlined eligibility rules and avoid coverage gaps. We solicited comments on the application of the treatment of non-taxable Social Security benefits under the section 36B definitions for purposes of Medicaid eligibility. We received many such comments.

Response: When the Medicaid Eligibility proposed rule was published, section 36B of the IRC did not include non-taxable Social Security benefits in MAGI. Public Law No. 112–56, signed into law on November 21, 2011, amended section 36B(d)(2)(B) of the IRC to modify calculation of MAGI to include in MAGI Social Security benefits which are not taxed. Therefore, all Social Security benefits under Title II of the Act, including those that are not taxable, will be counted in determining MAGI for Medicaid and other insurance affordability programs.

Comment: We also solicited comments on our proposal to retain current Medicaid rules for the treatment of income in three limited circumstances: Lump sum payments; certain educational scholarships and grants; and certain American Indian and Alaska Native (AI/AN) income.

While many commenters supported the proposed policy for consideration of lump sum income, several commenters opposed counting a lump sum as income only in the month received and not prorating lump sum income to count such windfalls of potentially large amounts of money (for example, lottery earnings or gambling profits) over the period under consideration.

Response: The policy specified in the Medicaid Eligibility proposed rule reflects the methodology already applied in many States. It also reflects the SSI policy that is used for many non-MAGI eligibility groups. No commenter provided evidence and we are not aware of any evidence that this policy will have a significant impact on Medicaid eligibility. We believe that the potential for individuals who receive large windfalls of money in a lump sum payment to become eligible for Medicaid under the rule is outweighed by the likelihood that many more low-income individuals would lose Medicaid eligibility under the commenters' proposal due to receipt of a small lump sum payment that is not in fact available to purchase coverage through the Exchange throughout the year.

Comment: A number of commenters requested that the rule specify that if an individual is determined ineligible due to lump sum income, the individual's eligibility should be considered for the next month when the lump sum income is not taken into consideration, and the individual should not be required to file a new application.

Response: We are not requiring States to reconsider applicants' eligibility in a subsequent month without a new application if lump sum income in the month of application results in financial ineligibility for Medicaid. However, doing so is permitted under the statute and regulations.

Comment: Some commenters supported our proposed policy at § 435.603(e)(2) for certain educational scholarships and grants to be excluded as MAGI-based income; no commenters opposed the proposed policy.

Response: We are finalizing § 435.603(e)(2) as proposed, except that we are also excluding awards used for education purposes. It was an oversight that such awards were not mentioned in the Medicaid Eligibility proposed rule.

Comment: Several commenters recommended clarifying revisions in the exemption of certain AI/AN income specified at § 435.603(e)(3) to reflect section 5006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, enacted on February 17, 2009) and other legislative and statutory requirements. Several commenters supported the provisions proposed in § 435.603(e)(3) to use the most beneficial (that is, least restrictive) exemptions of AI/AN income from the current Medicaid and 36B rules, to maximize these individuals' access to Medicaid coverage while maintaining enrollment simplification and coordination.

Response: We are finalizing § 435.603(e)(3) with some modifications for consistency with Federal statutory requirements about certain AI/AN income and with the guidance issued by CMS on January 22, 2010 in State Medicaid Director Letter #10–001, available at *http://www.cms.gov/smdl/downloads/SMD10001.PDF.*

Comment: Several commenters suggested that we replace the words ''distributions'' and ''payments'' with the term ''income derived'' throughout § 435.603(e)(3).

Response: Section 5006(b) of the Recovery Act specifies that these properties and ownership interests are excluded resources for Medicaid and CHIP. Monies that result from converting excluded resources are not considered income, but are still considered resources. Therefore, changing ''distributions'' and ''payments'' to ''income derived'' would reclassify exempted resources as income that would need to be counted under MAGI, which we do not believe is the commenter's intent. Resources are not counted in determining financial eligibility using MAGI-based methods. Therefore, we are not accepting the comment.

Comment: Several commenters recommended adding exclusions for Judgment Funds distributions due to their exclusion from taxable income under the Judgment Fund Use and Distribution Act (25 U.S.C. 1401, *et seq).*

Response: We are finalizing § 435.603(e)(3) without adding a specific exclusion for Judgment Funds because the IRC and the section 36B definition of MAGI treat Judgment Fund distributions either identically to or more liberally than current Medicaid rules for exclusions from consideration for AI/AN populations. In § 435.603(e)(3), we are only listing the specific types of distributions that the IRC treats as taxable income, but which are excluded from consideration as income for purposes of Medicaid and CHIP eligibility under the Recovery Act and current law.

Comment: Several commenters stated that proposed § 435.603(e)(3) narrows the exclusion under section 1396a(ff) of the Act of distributions from ownership interests and real property usage rights relating to off-reservation hunting, fishing, gathering, harvesting, or usage rights not tied to real property ownership from consideration for purposes of Medicaid eligibility.

Response: We have added a new paragraph (iii) at § 435.603(e)(3) (and have renumbered paragraphs (iii) through (v) in the Medicaid Eligibility proposed rule as (iv) through (vi) in this final rule) to exclude distributions and payments derived from the ownership interests and real property usage rights at issue.

Comment: Several commenters inquired whether alien sponsor deeming will still apply under MAGI policies for Medicaid.

Response: Nothing in the Affordable Care Act changed the requirements in section 421 of PRWORA, as amended, which require that the income of a sponsor and the sponsor's spouse be deemed available to certain sponsored non-citizens. We expect to provide subsequent guidance on this matter.

Comment: Several commenters mentioned that the proposed rules are silent on how to treat other types of income, and requested clarification as to whether current Medicaid rules or the 36B rules will apply to those types of income in determining Medicaid eligibility.

Response: Unless there is an exception provided at § 435.603(e) of the regulation, 36B definitions are

applied to all types of income. We will provide subsequent detailed guidance on the treatment of all types of income under the new MAGI-based methodologies.

Comment: Several commenters requested guidance regarding how States will obtain different MAGI income calculated for various household members.

Response: Section 1902(e)(14) of the Act, as added by section 2002 of the Affordable Care Act, provides for application of a new set of rules—or methodologies—to determine financial eligibility for Medicaid. While the new Medicaid MAGI-based financial methodologies differ somewhat from current Medicaid AFDC-based methodologies, the need to determine countable income for different household members is similar to the process used today for obtaining information and calculating countable income for eligibility determinations. States generally will need to obtain information through the application process, as well as from electronic data sources to calculate the MAGI-based income of each person in the household whose income will be included in total household income.

6. Household (§ 435.603(f))

Comment: One commenter encouraged the Federal agencies to come up with a common, workable definition of household and fully reimburse States for the cost of implementing the new definition, including the costs resulting from any increased Medicaid and CHIP enrollment.

Response: While we understand the commenters' interest in having a single definition of household across all Federal programs, the statutory provisions governing the definitions and methodologies for each program necessitate some variation. State options, such as Express Lane eligibility, offer ways that States can look beyond differences in program definitions. Enhanced funding at a 90/10 matching rate is available for systems development needed to implement the new rules subject to certain standards and conditions, under the ''Federal Funding for Medicaid Eligibility Determination and Enrollment Activities'' final rule published on April 19, 2011 (76 FR 21950). Under section 1905(y) of the Act, increased FFP, set at 100 percent for the first 3 years of implementation and phasing down to 90 percent in 2020 and beyond, also is available for ''newly-eligible'' individuals eligible for coverage under the adult group at § 435.119.

Comment: One commenter questioned whether States can permit an applicant to exclude certain household members (for example, a stepparent or a sibling with income) to make other members eligible for Medicaid, as is permitted currently under Medicaid.

Response: Individuals cannot choose who is to be included or excluded from their household under § 435.603(f).

Comment: Some commenters see no reason to apply different policies for tax filers versus non-filers or based on who files and claims someone else in the family as a tax dependent. These commenters stated that whether and how families file taxes should not have such a direct impact on their eligibility for health insurance.

Response: As explained in the preamble of the Medicaid Eligibility proposed rule (76 FR 51156–51159), section 1902(e)(14)(A) of the Act generally requires application of tax relationships in determining household composition, except as provided in section 1902(e)(14) (D) and (H) of the Act. However, in the case of non-filers, there are no tax relationships upon which to determine the household for purposes of Medicaid eligibility. Therefore, separate rules are needed. As explained in the Medicaid Eligibility proposed rule (76 FR 51158 through 51159), we are issuing rules for non-filers which, for most families, will result in the same outcome as the rules for tax filing families. Also, we are revising language at § 435.603(f)(1), (f)(2), and (f)(3) to replace language about who ''files'' a tax return with who ''expects to file'' and to replace language about who ''is claimed'' with who ''expects to be claimed'' as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made. Similarly, consistent with tax-filing rules, we are providing at § 435.603(d)(2)(i) and (ii) that the income of a child or other tax dependent is not counted in the taxpayer's household income if such dependent does not expect to be required to file a tax return for the year in which coverage is sought.

Comment: Many commenters expressed particular concern about stepparent deeming under § 435.603(f)(1) and (f)(2) of the rule, especially in States where stepparents are not financially responsible for stepchildren or if the stepparent does not claim the stepchild as a tax dependent. Many commenters also opposed counting a child's income in determining the eligibility of other household members, including parents and siblings. Some commenters opposed inclusion in the parents' household of children aged 21 and older and those living outside the parents' home if such child is claimed as a tax dependent. The commenters feel that adopting the 36B definitions in such cases will result in a loss of eligibility that cannot be justified by a desire for consistency between Medicaid and Exchange policies. Several commenters mentioned the *Sneede v. Kizer* and related court decisions which prohibit income deeming for individuals besides the spouse or a minor child's parents.

Response: Some individuals' eligibility will be affected by the inclusion of children in their stepparents' household, the inclusion of older children and those living outside of the home in the parents' household if they are claimed as tax dependents, and the inclusion of stepparent income, as well as the income of a child or sibling when required to file a tax return. However, the law generally requires that Medicaid apply the 36B household and income definitions beginning in 2014. Therefore, for the reasons specified in the Medicaid Eligibility proposed rule (76 FR 51157 through 51159), we are finalizing without modification the provisions relating to the inclusion of stepchildren and stepparents in the household and the counting of child and sibling income when such income exceeds the filing threshold defined in the IRC. We do not comment on specific existing court orders. Parties affected by such orders must determine whether they need to seek relief or modification from the appropriate court in light of the changes to Federal law affected by the Affordable Care Act.

Comment: Several commenters stated that the agency should not have to determine whether an individual aged 19 or 20 is a full-time student for purposes of the household composition rules at § 435.603(f)(3) because doing so will increase the administrative burden and time required for determining eligibility.

Response: While determining student status may add to administrative burden and complexity, we do not think it appropriate to prohibit States from counting parental income for full-time students age 19 and 20 whom the parents can claim as qualifying children on their tax return. To accommodate both these concerns, we are revising the final regulations at § 435.603(f)(3)(ii) and (iii) and adding a new paragraph at § 435.603(f)(3)(iv) to provide States with the flexibility to consider children and siblings age 19 or 20 who are full-time

students to be members of the same household as the parents and other siblings under age 19. Conforming revisions to the exceptions to the application of the 36B definitions at § 435.603(f)(2)(ii) (relating to children living with both parents who do not expect to file a joint tax return) and § 435.603(f)(2)(iii) (relating to children expected to be claimed as a tax dependent by a non-custodial parent) also are made to align the ages of children specified in those paragraphs with the option now afforded States under § 435.603(f)(3)(iv).

Comment: Regarding the exception to the application of the 36B definition of household at § 435.603(f)(2)(ii) for children living with both unmarried parents, some commenters recommended that we follow the 36B definition to count only income of the parent claiming the child as a tax dependent. The commenters were concerned that similarly-situated families will be treated differently depending on their tax filing and marital status, such as a child living with married parents compared with a child living with unmarried parents. These commenters stated that under the Medicaid rule, the income of both parents will be counted in determining the child's Medicaid eligibility; whereas under the Treasury rule, only the income of the parent claiming the child as a tax dependent will be counted in determining eligibility for APTC through the Exchange. Although the income of both parents in this situation is considered for the child's Medicaid eligibility under current Medicaid rules, the commenters were concerned that counting both parents' income for the child's Medicaid eligibility could cause a gap in coverage if the Exchange only counts the income of one parent and both parents have income below the Medicaid standard for coverage under the adult group.

Response: We do not believe that the gap about which the commenters are concerned will, as a practical matter, exist. If one parent has income above the applicable MAGI standard for the child's Medicaid eligibility, that parent can receive an APTC for the child, as long as the parent claims the child when filing his or her tax return for the year in which coverage is sought. If both parents' income is below 100 percent of the FPL, we believe that the child's household income for a family size including both parents, as well as the child, will be at or below the lowest possible applicable MAGI standard possible for children under Federal law—133 percent of the FPL, so the child will be eligible for Medicaid. However, new § 435.603(i) eliminates any inadvertent gaps in coverage resulting from a difference in methodologies applied under the Medicaid and Exchange regulations.

Additionally, we are making a technical change to the proposed regulation at § 435.603(f)(2)(ii) to except a child from the general rule applicable to children expected to be claimed as a tax dependent by a parent in paragraph (f)(1). The Medicaid Eligibility proposed rule applied this exception to children under 21 who are living with both parents when the parents are not married. The intent, as explained in the Medicaid Eligibility proposed rule (76 FR 51158), was to apply this exception in the case of children living with both parents when the parents cannot (because they are not married) or do not choose to file a joint tax return. We are revising paragraph (f)(2)(ii) to reflect this intent in this final rule. Under the final rule, the rules applicable to non-filers at § 435.603(f)(3) will apply to children living with both parents, when the parents do not expect to file a joint tax return.

Comment: Commenters generally supported proposed § 435.603(f)(2)(iii) for recognizing that custodial parents need to be able to apply for and obtain, based on that parent's income, coverage for the child, regardless of which parent claims the child as a tax dependent. However, commenters also expressed concern that different policies applied for purposes of determining Medicaid eligibility versus eligibility for APTCs (for which the child is always counted in the household of the parent who claims the child as a tax dependent) would be difficult to administer and may result in a gap in coverage in some situations. Some commenters stated that the proposed Medicaid policy for custody situations does not address joint or shared custody arrangements. Many commenters suggested more flexibility in the rules, such as permitting parental choice. Some commenters recommended that if the custodial parent refused to apply for Medicaid for the child, the non-custodial parent should be able to apply for the child. Some commenters recommended that the non-custodial parent's income rather than the custodial parent's income be counted for the child's eligibility if that would make the child eligible. A few commenters pointed out that if a court requires a non-custodial parent to provide medical support for the child, the non-custodial parent may not know whether the custodial parent has filed an application for coverage under Medicaid or other insurance affordability programs.

Response: We agree with the commenters that the rule regarding shared or joint custody situations needs clarification. We are revising § 435.603(f)(2)(iii) to provide that, for purposes of Medicaid eligibility, the custodial parent is established based on physical custody specified in a court order or binding separation, divorce, or custody agreement; or if there is no such order or agreement or in the event of a shared custody agreement, based on with whom the child spends more nights. This definition is consistent with the rule applied by the IRS for determining which parent may claim a child as a tax dependent. (See IRS Publication 501.)

We do not agree that a gap is created by the lack of alignment in the rules. A divorced or separated parent is not required to claim a child in the current tax year simply because he or she did so in the year before coverage is sought. Under sections 151 and 152 of the IRC (and as explained in IRS Publication 501), the custodial parent has the right to claim the child as a tax dependent, and only with the custodial parent's agreement can the non-custodial parent do so. Thus, by claiming the child on his or her tax return, the custodial parent can avoid any potential coverage gap that might otherwise result. We also do not agree that parents should be able to choose which parent claims the child as a member of his or her household for purposes of Medicaid eligibility, or that the non-custodial parent should be able to claim the child as part of his or her household whenever the custodial parent does not file an application for Medicaid, which would create a potential for gaming the rules (by allowing the parents to include the child in whichever household would make the child Medicaid eligible).

Comment: One commenter requested that we clarify the meaning of ''living with'' in the context of the non-filer household composition rule and questioned whether the State would have the flexibility to determine this in the context of students and in other situations.

Response: This provision, which relates to whether spouses, parents, and children are members of the same household for purposes of determining financial eligibility and reflects longstanding Federal policy derived from the former AFDC program, is a different matter than the State residency rules addressed in section III.C. of this preamble and § 435.403 of this final rule. We will consider providing future guidance on the meaning of this term.

Comment: A commenter questioned whether a child under age 21 not living with the child's parents may file an application without the parent being informed or involved (even if the parent claims the child as a tax dependent), consistent with current practice in many States.

Response: State law and regulation establish who may file an application for an insurance affordability program on behalf of a child under age 21, and nothing in the Affordable Care Act or these regulations alters State authority or flexibility on this matter.

Comment: One commenter asked whether the omission of the word ''natural'' related to siblings in § 435.603(f)(3)(iii) was an oversight.

Response: The omission of ''natural'' before ''adoptive and stepsiblings'' in § 435.603(f)(3)(iii) was an oversight which we are correcting in this final rule.

Comment: Several commenters recommended retaining current Medicaid policies for a minor child who is pregnant or a custodial parent and is living with the minor child's parent, so the minor child may be considered as a separate household from the minor child's parent if otherwise the minor child would be ineligible, even if the minor child's parent is claiming the child as a tax dependent.

Response: Under section 1902(a)(17)(D) of the Act, States currently are generally required to count the income of a minor child's parent in determining the child's eligibility. However, prior to the implementation of MAGI in 2014, States may use the authority of section 1902(r)(2) or 1931 of the Act to adopt a more generous financial methodology and disregard a parent's income to make a pregnant teen or teen parent eligible. Such income disregards will not be possible under the MAGI-based financial methodologies.

7. No Resource Test or Income Disregards (§ 435.603(g))

Comment: Many commenters supported the proposal to prohibit consideration of assets in determining financial eligibility for Medicaid and CHIP. A few commenters recommended retaining the asset test because eliminating the test entirely could incentivize people with significant assets to stop working and could result in others with significant assets, but minimal income, being enrolled in Medicaid at the taxpayer's expense.

Response: Section 1902(e)(14)(C) of the Act, as added by section 2002 of the Affordable Care Act, expressly prohibits consideration of assets in determining eligibility for individuals whose financial eligibility is based on MAGI methods. We do not have the flexibility to issue regulations to the contrary and are finalizing the regulation at § 435.603(g) as proposed. We note that currently almost all States do not consider assets when determining children's eligibility for Medicaid and nearly half of all States have also dropped the asset test for parents.

8. Budget Period (§ 435.603(h))

Comment: In the Medicaid Eligibility proposed rule (76 FR 51156), we solicited comments on how best to prevent a gap in coverage between eligibility for Medicaid and for APTCs through the Exchange when eligibility for APTCs is based on annual income, whereas eligibility for Medicaid is based on current monthly income. Many commenters expressed concern that the goals of coordination and simplicity will be undermined if the budget periods used by Medicaid, CHIP, and the Exchange are not aligned, and that confusion on the part of consumers and gaps in coverage might result. Many commenters recommended either requiring the use of annual income for new applicants or providing this as a State option. One commenter suggested requiring use of annual income, but giving applicants a choice to use current monthly income if less than annual income. A number of commenters also recommended requiring use of annual income for current beneficiaries, rather than doing so at State option. Some commenters urged that the annual income previously reported to, and available through, a data match with the IRS be used by all programs. A number of commenters recommended that annual projected income for beneficiaries under the option afforded States in proposed § 435.603(h)(3) be based on each individual's 12-month redetermination period established under § 435.916, rather than the current calendar year, as proposed in § 435.603(h)(2). Several commenters stated that a mechanism is needed to cover individuals in Medicaid if their current monthly income exceeds the Medicaid limits but they are ineligible for APTCs through the Exchange because their projected annual income is less than 100 percent of the FPL.

Response: The Medicaid ''point in time'' principle is explicitly retained in the Affordable Care Act. Thus, we are finalizing § 435.603(h)(1) as proposed to require the use of current monthly income in evaluating eligibility of applicants and individuals newly enrolling in the program, as provided under section 1902(e)(14)(H) of the Act. However, we agree with the commenters that unintended gaps in coverage should be avoided. As discussed above, we are adding new language at § 435.603(i) of the final rule to apply 36B methodologies, including use of annual income, when application of different MAGI-based methods under Medicaid than those applied under the 36B definitions otherwise would result in a gap in coverage. We also are revising § 435.603(h)(2) to clarify that the projected annual household income which States can opt to use for current beneficiaries is for the remainder of the current calendar year. This will prevent a gap in coverage and someone bouncing back and forth between programs when current monthly income is below the Medicaid income standard, but projected annual income based on the full calendar year (including previous months) is above the Medicaid standard.

Comment: Several commenters expressed concern about how to determine applicants' MAGI-based income for a monthly budget period, as some of the line items on the Federal tax return, reported as an annual figure, are not easily translated to a monthly amount.

Response: While we are not addressing this issue in this rulemaking, we understand the need for further information and will provide ongoing technical assistance on the determination of current monthly income using MAGI-based methodologies in the context of working with States on implementing this final rule.

Comment: Several commenters stated the potential difference in FPL amounts used by Medicaid as compared with the Exchange for determining eligibility.

Response: Because Medicaid eligibility is determined at a point in time, Medicaid uses the FPL amounts that are published and in effect when eligibility is determined. Under 45 CFR 155.300(a) of the final Exchange regulation and § 1.36B–1(h) of the proposed Treasury regulation, eligibility for APTCs is based on the most recently published FPL amounts as of the first day of the annual open enrollment period for applying for coverage in a QHP through the Exchange. Since Medicaid will always use the same or more recent FPL amounts, which are adjusted for inflation, than those used for purposes of the APTC, the FPL amounts for Medicaid will be either the same as or higher than the amounts used for purposes of APTC eligibility. Therefore, no gap in coverage will result. In addition, we are adding a

definition of FPL to § 435.4 of the Medicaid final rule.

Comment: Many commenters supported the flexibility offered to States at § 435.603(h)(3) to adopt a reasonable method for including a prorated portion of reasonably predictable future income when determining eligibility for applicants and current beneficiaries, to account for seasonal workers, changes in employment contracts, or layoffs. Many commenters recommended that this method be required to prevent churning in and out of coverage, rather than offered to States as an option. A few commenters recommended that States be required to take into account predictable decreases, but not increases, in income. One commenter recommended that States not be given the option to include future increases in income, which may never come to pass. Several commenters recommended that the rule provide examples of what CMS would consider to be a ''reasonable method.'' Several commenters recommended that proposed § 435.603(h)(1) be amended to make it clear that paragraph (h)(3) is an exception to the use of monthly income under paragraph (h)(1).

Response: We are finalizing proposed § 435.603(h)(3) without modification. The policy is designed to provide States with flexibility to reduce churning between programs, which results from the fluctuations in income experienced by many Medicaid beneficiaries, and thereby to promote continuity of coverage for individuals and reduce administrative burden on States. States may make different choices in how best to achieve the goals of efficiency and continuity of coverage, so we are not making this policy a requirement. We also do not believe it is necessary to indicate in § 435.603(h)(1) that paragraph (h)(3) is an exception to the rule. Section 435.603(h)(3) clearly states that the option it affords States can be applied in determining monthly income under § 435.603(h)(1). Section 435.603(h)(3) provides that a prorated portion of a predictable change in income may be included or excluded in determining current monthly income. States will have flexibility to develop reasonable methodologies which make sense in the context of their State eligibility and enrollment systems. We will work with States to ensure the reasonableness of any method adopted. We will also collect and analyze data to inform States, the Federal government, and others as to the extent to which churning occurs and the policies and procedures that are effective in reducing churning.

Comment: Many commenters supported providing States with the flexibility to ignore temporary fluctuations in income when determining eligibility for current beneficiaries by using annual income rather than average monthly income. Several commenters recommended that States be offered the option to cover adults for a continuous eligibility period, similar to the option for children's coverage at section 1902(e)(12) of the Act.

Response: Use of the option to project annual income for current beneficiaries can help States minimize the churning between programs that each of the strategies proposed by the commenters seeks to address. However, there is no statutory authority for States to elect continuous eligibility for adults. In addition, section 1902(e)(14)(B) of the Act does not permit States to disregard fluctuations in income experienced by beneficiaries. However, States may propose section 1115 demonstration projects to apply continuous eligibility for adults and to adopt other simplification measures for parents or other adults.

9. Eligibility Groups for Which MAGI–Based Methods Do Not Apply (§ 435.603(j))

Comment: Numerous commenters were concerned about the eligibility of individuals with disabilities and those needing long-term services and supports under the Medicaid Eligibility proposed rule. Commenters were concerned that such individuals would be adversely affected if they are evaluated for coverage under optional eligibility groups only after they fail to establish eligibility based on MAGI-based methodologies.

Response: The expansion of eligibility to all adults under 65 under the Affordable Care Act was not intended to keep anyone from being able to access coverage under Medicaid that is more appropriately suited to their needs. Therefore, we are revising our policy under the final rule such that individuals who meet the eligibility requirements, and are determined eligible, for coverage under an eligibility group for blind or disabled individuals or for an eligibility group under which long-term services and supports are covered will be able to enroll for such coverage, regardless of whether or not they have MAGI-based household income which is at or below the applicable MAGI standard (133 percent of the FPL for the new adult group). Revisions to implement this change in policy being made to the MAGI screen regulation at § 435.911 are discussed in section III.F. of the preamble. Conforming revisions to the exceptions from application of MAGI-based methodologies for blind and disabled individuals and those needing long term care services also are being made in the final rule at § 435.603(j)(3) and (j)(4) (redesignated from paragraph (i) in the Medicaid Eligibility proposed rule) to provide for exception from application of MAGI methodologies to such individuals, but only for the purposes of determining eligibility on the basis of disability or being blind or for an eligibility group under which long term care services are covered. We also clarify in the final rule at § 435.603(j)(6) that the exception from MAGI for the medically needy is only for the purpose of determining eligibility on such basis.

Comment: One commenter requested clarification regarding the methodologies to be applied when eligibility is being determined based on the need for long term care services. The commenter specifically inquired about the applicability of spousal impoverishment rules.

Response: Our reference to eligibility ''on the basis of the need for long-term care services'' in the Medicaid Eligibility proposed rule would have too narrowly limited the MAGI exception contemplated by 1902(e)(14)(D)(iv) of the Act to individuals eligible under 1902(a)(10)(A)(ii)(V) and (VI) of the Act, and certain section 1115 waivers. We have revised the language relating to this exception in § 435.603(j)(4) of this final rule to except from application of MAGI methods individuals seeking coverage of long term care services for the purpose of determining eligibility under a group that covers such services. In making such determinations, all current methodologies, including spousal impoverishment rules, will apply to the same extent as such methodologies apply today.

Comment: Individuals over the age of 65 are exempt under the Affordable Care Act from application of MAGI-based methods, but determinations of eligibility for parents/caretaker relatives is based on MAGI methodologies. In the Medicaid Eligibility proposed rule (76 FR 51159), we solicited comments on what methodology should be used in determining eligibility for elderly parents and caretaker relatives over the age 65. Many commenters believe it would be burdensome for States to have to apply existing AFDC methodologies in the small number of cases in which an individual age 65 or older is being evaluated for eligibility on the basis of being a parent or caretaker relative. The commenters suggested that we limit the MAGI exemption for individuals age 65

and older to determinations where age is a condition of eligibility.

Response: We are revising § 435.603(j)(2) to except individuals age 65 or older from application of MAGI-based methods only when being 65 or older is a condition of Medicaid eligibility.

Comment: Some commenters suggested that we explicitly identify newborns automatically deemed eligible for Medicaid under section 1902(e)(4) of the Act (''deemed newborns'') as an exception to MAGI-based methodologies in § 435.603(j)(1) (§ 435.603(i)(1) in the Medicaid Eligibility proposed rule) because the Medicaid agency does not need to make a determination of income for these babies.

Response: Deemed newborns are excepted from application of MAGI-based methodologies as noted by the commenters. However, we are not modifying the Medicaid Eligibility proposed rule, as we do not find it necessary to list every situation in which the agency is not required to make an income determination in the regulation.

Comment: § 453.603(i)(6) provides that MAGI-methodologies do not apply to the determination of financial eligibility for the medically needy. One commenter questioned whether States will have flexibility to choose to apply some or all of the MAGI methodologies in determining medically needy eligibility for simplicity of administration.

Response: The Affordable Care Act expressly exempts medically needy individuals, whose eligibility is based on either AFDC or SSI financial methodologies, from application of MAGI-based financial methodologies. States which cover medically needy individuals are required under section 1902(a)(10)(C) of the Act to cover medically needy pregnant women and children, financial eligibility for whom currently is determined using AFDC methods. We recognize that retention of AFDC methods solely for the purpose of determining medically needy eligibility for these populations could be administratively burdensome for States. We are examining the options that may be available to avoid such burden.

Comment: One commenter questioned whether aged, blind and disabled individuals in section 209(b) States would be required to spend-down income to the traditional standard of need or 133 percent of the FPL. This same commenter suggested that the current policy of spending down to the standard of need forces a result contrary to the intent of Affordable Care Act because it places higher financial burden on access to coverage for ABD individuals.

Response: States which have elected to apply more restrictive methods than those applied for determining eligibility for SSI under section 1902(f) of the Act and § 435.121 of the regulations (''209(b) States''), but which do not cover medically needy aged, blind and disabled individuals, must allow aged, blind and disabled individuals whose income exceeds the income standard established for eligibility under § 435.121 to spend down to such standard and receive coverage. Nothing in the Affordable Care Act changes this provision. However, as explained in the preamble to the Medicaid Eligibility proposed rule (76 FR 51151), blind and disabled individuals whose income exceeds the standard established in a 209(b) State for coverage under § 435.121 are not required to spend down to such standard to become eligible for Medicaid. Such individuals are eligible for and can enroll in coverage under the new adult group without meeting a spend-down, provided that their MAGI-based income is at or below the applicable MAGI standard (133 percent of the FPL for the new adult group). However, such individuals have the choice to spend-down to establish eligibility under § 435.121 if coverage on such basis better meets their needs. Individuals age 65 and over are not eligible for Medicaid under the new adult group. Such individuals may be able to spend-down to Medicaid eligibility under § 435.121.

Comment: One commenter supported the policy that the exemption from MAGI only applies to the determination of eligibility for medically needy coverage and suggested that this policy be extended to individuals spending down to eligibility under § 435.121 in 209(b) States.

Response: An exception from application of MAGI-based methods applies in both circumstances. Eligibility for medically needy coverage under section 1902(a)(10)(C) of the Act is excepted from application of MAGI-based methods per section 1902(e)(14)(D)(IV) of the Act, as codified at § 435.603(j)(6) in this final rule. Eligibility for mandatory coverage for blind and disabled individuals in 209(b) States under sections 1902(a)(10)(A)(i)(II) and 1902(f) of the Act and § 435.121 of the regulations, including the ability to spend down to such eligibility, is excepted from application of MAGI-based methods per section 1902(e)(14)(D)(i)(III) of the Act, as codified at § 435.603(j)(3) in this final rule.

Comment: One commenter questioned why proposed § 435.603(i)(5) excludes from MAGI-based methods only the determination of Medicaid eligibility for Medicare cost sharing assistance and not individuals who are in receipt of Medicare generally.

Response: The Affordable Care Act does not provide for an exception from application of MAGI-based methods for individuals eligible for Medicare. The exception at section 1902(e)(14)(D)(i)(III) is limited to individuals eligible for Medicare cost-sharing assistance under section 1902(a)(10)(E) of the Act. We are interpreting the exception to apply only to determinations of eligibility for Medicare cost sharing so that States can apply the same MAGI-based methods used to determine such individuals' eligibility for full Medicaid benefits under other eligibility groups as are used for other individuals who are not eligible for Medicare cost-sharing assistance.

Comment: For the exception for foster care children from MAGI-based methods in section 1902(e)(14)(D)(i)(I) of the Act, one commenter questioned what ''being deemed to be a child in foster care under the responsibility'' of the State means. The commenter questioned whether ''under the responsibility of the State'' requires only that the State provide State-funded foster care assistance, or whether the State must exercise additional legal responsibility for the child.

Response: The exception to MAGI-based methods at section 1902(e)(14)(D)(i)(I) of the Act, as codified at § 435.603(j)(1) in the final rule, applies to children receiving Federal foster care, guardianship or adoption assistance payments under title IV–E of the Act and children eligible under an optional eligibility group for children receiving State foster care payments or in State-funded foster care, if the State covers such optional group under its State plan and does not apply an income test. Key to the application of the MAGI exception to such children is whether the State Medicaid agency is required to make a determination of income for a child in foster care to determine eligibility for Medicaid. The precise legal or custodial status of the child in relationship to the State is not material.

Comment: One commenter noted that children as a group are omitted from the list of exceptions from MAGI proposed § 435.603(i), which the commenter believes is inconsistent with section 1902(e)(14)(H)(ii) of the Act and section 2101(f) of the Affordable Care Act. The commenter recommended that the regulations should provide a

''secondary'' screening for children who would be eligible using current standards and methodologies, but who are not eligible when MAGI-based income is compared to the MAGI-equivalent income standard determined by the State under section 1902(e)(14)(A) and (E) of the Act.

Response: We disagree that the policy in the Medicaid Eligibility proposed rule is inconsistent with section 1902(e)(14)(H)(ii) of the Act or section 2101(f) of the Affordable Care Act. Section 1902(14)(H)(ii) of the Act—which provides that the application of the definitions of MAGI and household income in section 36B of the IRC ''shall not be construed as affecting or limiting the application of any rules established under'' the Medicaid statute or under a State plan or waiver of the State plan ''regarding sources of countable income''—must be read in conjunction with the general directive in section 1902(e)(14)(A) of the Act that financial eligibility for Medicaid be determined based on the section 36B definitions. We interpreted the whole of section 1902(e)(14) of the Act in the Medicaid Eligibility proposed rule as requiring that the section 36B definitions of ''MAGI'' and ''household income'' apply, except as expressly provided in section 1902(e)(14)(D) of the Act, or under the authority of section 1902(e)(14)(H)(ii) of the Act, where the impact on beneficiaries of applying the 36B definitions would be significant and where departing from the 36B definitions in favor of retaining the current Medicaid rule would not undermine the seamless and coordinated eligibility and enrollment system established under section 1413 of the Affordable Care Act and section 1943 of the Act. Section 1902(e)(14)(D) does not provide for a general exception from application of MAGI-based methodologies for children. Finally, the commenters' reliance on section 2101(f) of the Affordable Care Act is misplaced. As explained in section III.L. of the preamble, that section relates to the CHIP eligibility of children who lose Medicaid eligibility due to the elimination of income or expense disregards under section 1902(e)(14)(B) of the Act. Section 2101(f) of the Affordable Care Act does not provide for the retention of current financial methodologies for children in determining their eligibility for Medicaid.

Comment: One commenter disagreed that individuals who are deemed to be receiving SSI should be excepted from application of MAGI-based methods because an income determination for Medicaid is not required. The commenter stated that, except for eligibility under section 1619(a) and (b) of the Act, a determination of income must be made by the State Medicaid agency to determine if someone is deemed to be receiving SSI. The commenter also believes that a regulatory citation for disabled adult children should be included in the list of regulatory cross references included in § 435.603(j)(1), (§ 435.603(i)(1) in the Medicaid Eligibility proposed rule) for individuals who are deemed to be receiving SSI.

Response: The statute specifically includes the eligibility groups for deemed SSI recipients, along with individuals actually receiving SSI, in the list of individuals to whom the MAGI rules will not apply under section 1902(e)(14)(D)(i)(I) of the Act, which we proposed to codify at § 435.603(i)(1). Therefore, we are retaining the exception from MAGI-based methods for deemed SSI recipients in the final rule at § 435.603(j)(1). However, we are making a technical correction at § 435.603(j)(1) to indicate accurately which of the regulations cross referenced relate to eligibility based on receipt of SSI benefits and which relate to eligibility based on being deemed to receive such benefits.

Eligibility for disabled adult children under section 1634(c) of the Act is not codified in the Medicaid regulations at this time. Therefore, we will take the suggestion under consideration for possible future guidance.

Comment: Commenters agreed with the proposal (discussed at 76 FR 51159) not to identify at § 435.603(j)(3) (§ 435.603(i)(3) in the Medicaid Eligibility proposed rule) as excepted from MAGI-based methods children who are under age 18 who were receiving SSI on the basis of disability as of August 22, 1996, and would continue to receive SSI but for changes made by section 211 of PRWORA. Although such children are excepted from MAGI methods, there will be no—or virtually no— such children eligible for Medicaid on this basis as of January 1, 2014.

Response: We are not specifically identifying these children in this final rule.

C. Residency for Medicaid Eligibility Defined (§ 435.403)

As part of our overall effort to promote the coordinated eligibility and enrollment system established under sections 1413 and 2201 of the Affordable Care Act (discussed in greater detail in the Medicaid Eligibility proposed rule (76 FR 51160 and 51166)), we proposed to simplify Medicaid residency rules and to align those rules with those that will apply under the other insurance affordability programs.

Comment: Many commenters supported our proposal to remove the term ''permanently or for an indefinite period'' from the residency definition for adults in § 435.403(h)(1) and (h)(4), and replace the term ''intention to remain'' with ''intends to reside, including without a fixed address.'' Another commenter requested that CMS provide guidance for residency determinations for individuals who live in or visit multiple States or countries.

A few commenters expressed concern that the proposed term ''intends to reside'' introduces an element of ambiguity to the definition that may result in inconsistent application across States. A few of these commenters recommended that CMS add regulatory language consistent with the discussion in the preamble to the Medicaid Eligibility proposed rule to clarify that visitors are not considered residents of the State they are visiting.

Response: We believe that the proposed term ''intends to reside,'' when read within the context of the preamble clarifications, limits any such potential for ambiguity. In the preamble to the Medicaid Eligibility proposed rule, we explained that we interpret this language to mean that persons who are visiting the State, including for the purpose of obtaining medical care, are not considered residents of the State (76 FR 51150). Also, current regulations at § 435.403(j)(3) address a temporary absence and § 435.403(m) provides guidance regarding cases of disputed residency between States. For these reasons, we believe that further clarification in the regulatory text to preclude visitors from being considered residents of a State in which they are visiting is unnecessary.

Thus, we are adopting our proposal to strike the term ''permanently or for an indefinite period'' and replace the term ''intention to remain'' with ''intends to reside, including without a fixed address'' without substantive modification in § 435.403(h)(1) and (h)(4). Note that the language that appears in the Medicaid Eligibility proposed rule at § 435.403(h)(1)(i) regarding individuals who do not have capacity to state intent is now found at paragraph (h)(2) in the final rule, without any substantive modification. Therefore, we redesignated paragraphs (h)(2) through (h)(4) as paragraphs (h)(3) through (h)(5). We have also added clarifying language to paragraph (h) to specify that State residency of individuals receiving State

supplementary payments is addressed in paragraph (f) of this section.

Comment: Many commenters supported the proposed inclusion of individuals who have entered the State with a job commitment or are seeking employment (whether or not currently employed) as satisfying the State residency requirement for adults as proposed at § 435.403(h)(1)(ii). However, a few commenters expressed concern that such inclusion could create a burden for States to cover those seeking work, but not living in the State. One commenter recommended we limit this provision to migrant or seasonal workers. A few commenters raised a concern that removal of ''living'' in the State from § 435.403(h)(1)(i) would have the unintended effect of eliminating the physical presence requirement from the definition of residency. In contrast, one commenter recommended inclusion of a *future* intent to reside in a State in limited circumstances, such as when a disabled individual desires to relocate but cannot safely do so until Medicaid services are in place.

Response: We are retaining our proposed language in § 435.403(h) regarding individuals who have secured employment or are seeking employment and we are revising our regulation text consistent with commenters' recommendations so our intent is clear that to be a resident, an individual must be living in the State. As explained in the Medicaid Eligibility proposed rule preamble, we proposed to remove the word ''living'' from the definition of residency to simplify the language, not to change the policy. We are revising the proposed regulation at § 435.403(h)(1) and § 435.403(h)(4) (redesignated to § 435.403(h)(5) in the final rule), to clarify its application to only those individuals who are living in the State.

With regard to an individual's ability to initiate the application and enrollment process when such individual is not present in the State, we may address in future guidance ways in which States might facilitate the determination of eligibility for individuals moving into the State, particularly for those whose health care needs are such that a gap in coverage occasioned by a move would be detrimental to their health.

Comment: In response to our proposal to maintain States' current flexibility to determine whether students ''reside'' in a State for families in which children attend school in a State different than their parents, many commenters urged CMS to establish a clear policy on student residency that aligns with Exchange policy, which allows taxpayers to choose State of residency for tax dependents who live in another State to prevent potential gaps in coverage. These commenters strongly recommended that States should not be given flexibility, but be required to allow parents to choose the State of their child's residence for purposes of Medicaid eligibility as well. Another commenter suggested that individuals age 18 and older be allowed to express their own intent, rather than relying on their parents. Several commenters expressed concern about access to services when American Indian/Alaskan Native (AI/AN) youth reside apart from their parents in boarding schools operated by the Bureau of Indian Education.

Response: As stated in the Medicaid Eligibility proposed rule, while States will have flexibility for students attending school in States different from their parents, States must still provide individuals with the opportunity to provide evidence of actual residency (76 FR 51160). If there is a dispute in Medicaid State residency, the individual is a resident in the State in which the individual is physically located under our current regulations at § 435.403(m). If the individual's household income is under the applicable MAGI standard in the Medicaid State of residency (at least 133 percent of the FPL), the individual will be eligible for Medicaid based on MAGI in that State. If the individual's household income is over the applicable MAGI standard in the Medicaid State of residence, the individual will be eligible for Exchange-based coverage in the State of residency determined in accordance with Exchange regulations at 45 CFR 155.305(a)(3)(iv). Thus, there should be no gap in coverage. Permitting taxpayers or parents/guardians to decide in which State an individual is a State resident could have significant cost implications for States, particularly with large student populations, and also could be challenging to operationalize. Note that students who are under age 21 and who are married or emancipated will be considered State residents using the same rules as adults (see § 435.403(i)(1)), enabling them to express their own intent about their State of residence. Thus, we are not modifying our regulation text, but will work with States and other stakeholders on the application and enrollment information that applicants will need to apply and enroll in coverage. Finally, access to care for individuals temporarily physically located in a State other than their State of residence is a concern that is not unique to AI/AN students going to a school in a State other than where their parents live. Coordination and cross-State payment arrangements are important mechanisms to address this and we will continue to work on this issue (see more information below).

Comment: Many commenters supported the consolidation of two existing definitions of residency for children (disabled children with non-disabled, non-institutionalized, non-IV–E foster care/adoption assistance children) as proposed in § 435.403(i)(2), primarily for stated simplification purposes. One commenter noted that such prohibition would eliminate the current problem with States denying Medicaid for newborns residing in the State born to parents who may not be considered State residents.

Response: We are finalizing the Medicaid Eligibility proposed rule without significant change, as set forth at § 435.403(i)(2). We agree that consolidation of the two existing definitions of residency for children, application of a similar residency definition as that proposed for most adults without the ''intent'' component simplifies the regulation. We have also made minor modifications to the regulation text to clarify that States cannot determine a child's residency based solely on the parent's residency at § 435.403(i)(2). We have also added clarifying language to paragraph (i) to specify that State residency of individuals receiving State supplementary payments and individuals receiving IV–E assistance are addressed in paragraphs (f) and (g) of this section, respectively.

Comment: In response to our solicitation for comments for whether we should change the current State residency policy with regard to individuals living in institutions and adults who do not have the capacity to express intent, we received many comments urging CMS to determine residency for institutionalized individuals based on the intent of the parent or guardian, rather than current policy that determines residency based on State residency of the parent or guardian at time of the individual's placement in the institution even after a parent or guardian has moved to another State. One commenter recommended that CMS consider amending § 435.403 to provide that the State of residence for all individuals who lack the capacity to form intent be chosen by the parent or guardian, irrespective of an individual's age.

Response: We will consider these suggestions in our development of

future guidance and technical assistance.

Comment: Several commenters recommended that CMS modify the proposal to include as residents individuals who enter the State seeking medical treatment, particularly in the context of persons who are members of Tribes who receive services at Youth Residential Treatment Centers (YRTCs), federally-managed boarding schools for tribal members, Indian Health Service (IHS) or other tribal providers. The commenters also raised concerns about the administrative burdens and barriers that providers serving these individuals experience entering into provider agreements with multiple States and receiving Medicaid payments for services rendered to individuals who reside in those States. Some commenters suggested that we develop a rule that would provide State residency for AI/AN children in the State in which the provider or facility is located.

Response: In general, we do not believe it is reasonable to require a State to administer benefits to individuals who are present in the State only to receive medical care, and thus we are not modifying the Medicaid Eligibility proposed rule. We believe such a policy would be inconsistent with the common understanding of State residency, which is focused on individuals who live and intend to remain living in the State. Requiring a State to cover individuals who were solely present in the State to seek medical treatment would have a differential financial impact on States with medical institutions that attract individuals from across the country. That said, it is important to address interstate coordination of enrollment, retention, and access to services for low-income Medicaid and CHIP children. In accordance with section 213 of the Children's Health Insurance Program Reauthorization Act (CHIPRA), we published a notice in the December 18, 2009 **Federal Register** (74 FR 67232) soliciting comments to assist in the development of a model interstate coordination process. The model process is available at *http://www.cms.gov/CHIPRA/Downloads/InterstateCoordination.pdf* and we have invited feedback from interested parties regarding the viability of the proposal.

We intend to consider whether there is a need for further rulemaking to address the situation of individuals who are receiving services at entities that are federally-managed or operated under the authorities established by the Indian Self-Determination and Education Assistance Act, such as YRTCs operated under the Indian Health Care Improvement Act and boarding schools operated by the Bureau of Indian Education, whether operated by the Indian Health Service, Bureau of Indian Education, or by an Indian Tribe or Tribal organization. We welcome information on the impact such policy might have on States, federally-managed providers, Tribal governments, and Tribal members. We also plan to consult with Tribes as we consider this issue.

Comment: One commenter recommended that § 435.403 codify the definition of ''lawfully residing'' currently in use in Medicaid and CHIP, under CHIPRA. Additionally, the commenter recommended the inclusion of the additional categories to the current CHIPRA definition.

Response: The definition of ''lawfully residing'' is outside the scope of this final rule.

Comment: We received one comment asking whether our proposed revisions to the State residency definition affect children receiving foster care or adoption assistance under title IV–E of the Act or State-funded programs.

Response: Our proposed revisions to the State residency definition have no impact on IV–E foster care or subsidized adoption children, as we did not propose to amend the rules governing State residency of individuals who receive IV–E assistance at § 435.403(g). All other individuals under the age of 21, who are not institutionalized or emancipated or receiving a State supplementary payment, would be treated under our rules at redesignated § 435.403(i) in our final rule.

D. Timeliness Standards (§ 435.912)

Comment: A number of commenters requested additional information regarding timeliness and performance standards that will assure a seamless consumer experience, minimize administrative burdens, and otherwise ensure compliance with various provisions of this final rule. We also received comments requesting additional information with respect to the data reporting requirements for States to ensure adequate oversight of the administration of the program.

Response: We recognize the need to provide parameters within which performance will be measured and to outline the areas where data and other information will need to be provided to monitor compliance with this final rule. We have revised current regulations at § 435.911 (redesignated at § 435.912) to provide additional guidance on the timeliness standards for making eligibility determinations. We are soliciting additional comment and issuing as interim final § 435.912.

Under the current regulations, States are directed to establish standards not to exceed 90 days in the case of individuals applying for Medicaid on the basis of disability and 45 days for all other applicants. The revised regulation at § 435.912 distinguishes between performance and timeliness standards, and States are directed to establish both. Under § 435.912(a), ''timeliness standards'' refer to the maximum period of time in which every applicant is entitled to a determination of eligibility, subject to the exceptions in § 435.912(e); ''performance standards'' are overall standards for determining eligibility in an efficient and timely manner across a pool of applicants, and include standards for accuracy and consumer satisfaction, but do not include standards for an individual applicant's determination of eligibility.

Section 435.912(b) also includes the expectation, set forth in the proposed § 435.911(c) and § 435.1200(e) and (f), that the State agency determine eligibility and, where appropriate, transfer the electronic account of individuals to other insurance affordability programs, promptly and without undue delay. Section 435.912(c) sets forth criteria which the agency must account for in establishing timeliness and performance standards, including: (1) The capabilities and cost of generally available systems and technologies; (2) the general availability of electronic data matching and ease of connections to electronic sources of authoritative information to determine and verify eligibility; (3) the demonstrated performance and timeliness experience of State Medicaid, CHIP and other insurance affordability programs, as reflected in data reported to the Secretary or otherwise available; and (4) the needs of applicants and their preferred mode of application submission and communication, as well as the relative complexity of adjudicating the eligibility determination based on household, income, or other relevant information. Note that the standards to be adopted pursuant to proposed § 435.912(c) are expected to reflect the systems and technological capabilities and electronic data matching which are generally available for use by States at reasonable cost. Our expectations are that these systems and technological capacities generally make it possible for real time determinations of eligibility in most cases. Standards shall be set reflecting this expectation as well as the pace and experience of States that are making ongoing and reasonable investments in systems improvements and technology

supported by Federal matching payments. Finally, we clarify in the regulation at § 435.912(b) that the Secretary will provide additional guidance on the timeliness and performance standards, with which the standards established by States under the regulation also will need to comply.

Not addressed in § 435.912 are performance standards relating to other aspects of States' eligibility and enrollment systems to ensure accountability, consistency, and coordination. Guidance regarding such other performance standards is forthcoming.

E. Application and Enrollment Procedures for Medicaid (§ 435.905, § 435.907, and § 435.908)

The Affordable Care Act directs the Secretary to establish a model, streamlined application and enrollment process for use by States. The sections that follow summarize the key elements of the process.

1. Availability of Program Information (§ 435.905)

We proposed to implement section 1943(b)(1)(A) of the Act directing States to develop procedures that enable individuals to apply for, renew, and enroll in coverage through an internet Web site through amendments to § 435.907 and § 435.908. In conjunction with those procedures, we also proposed to revise § 435.905 to require that information be available in electronic formats, as well as in paper formats (and orally as appropriate).

Comment: Many commenters advised that the list of information that the agency must furnish, as described in § 435.905(a)(1) through (a)(3), needs to be expanded to include information on application/renewal processes, assistance, appeals, and benefits including the benchmark benefit package. One commenter also requested that § 435.905(a) be revised to state that applicant information should be confidential in all circumstances.

Response: We do not believe that any revision to the proposed regulation is required. We are strongly committed to ensuring applicants and beneficiaries have the information they need as well as to ensuring the confidentiality of applicant and beneficiary information. Most of the information identified must be furnished to applicants and other parties under the existing regulation at § 435.905, and that requirement was not changed by the Medicaid Eligibility proposed rule. The remaining requested information is required to be provided to applicants and other parties in other parts of the regulations governing the Medicaid program. Applications and assistance must be available under § 435.907 and § 435.908. Regulations governing confidentiality of applicant and beneficiary information are set forth in existing regulations at subpart F of part 431 of the regulations.

Comment: Many commenters suggested that the information in § 435.905 needs to be publicly available online, not just to those ''who request it.'' Several commenters specifically recommended that we add a cross-reference to § 435.1200(d), relating to the Internet Web site required under the Affordable Care Act. One commenter requested that we clarify that States only need to mail applicants program information upon request.

Response: Our intention is for program information to be widely available in ''electronic'' formats, meaning that such information must be available to the public via the Internet Web site, not just upon request. We are adding a cross-reference to the regulation at § 435.1200(f) as a helpful clarification of this policy. Under § 435.905, States are only required to mail program information upon request.

Comment: A few commenters stated that Medicaid agencies should be required to provide information regarding all insurance affordability programs, not just Medicaid, to promote consistency and coordination across programs.

Response: It is our expectation that all insurance affordability programs will coordinate and make available the basic information needed for individuals to understand all programs and make informed choices about applying for coverage. The Internet Web site required under § 435.1200(f) must promote access to information on all insurance affordability programs, which includes Exchange, Medicaid, CHIP, and the Basic Health Program (BHP) if applicable. Section 1943(b)(4) of the Act, as added by section 2201 of the Affordable Care Act, requires that such Web site be linked to the Web site established by the Exchange, and under § 435.1200(b)(3), the State Medicaid agency must enter into an agreement with the other insurance affordability programs operating in the State to implement the requirements of § 435.1200, including paragraph (f).

Comment: The large majority of commenters support our proposed regulation that program information be provided in simple and understandable terms and accessible to persons who are limited English proficient and people with disabilities. Many commenters made specific recommendations that we include in the regulation standards and thresholds for translation of written information. For example, many suggested that we require written translations where at least 5 percent or 500 limited English proficient individuals reside in the State or service area of the Medicaid program, whichever is less. Many commenters also recommended we add to this rule specific requirements to provide oral interpretation, such as for all languages free of charge to the individual, and to inform individuals how to access these services, such as requiring ''taglines'' in a specified number of languages. (A tagline is a brief statement in the individual's language that informs the person how to obtain language services.) Many of these commenters recommended that we add to the final rule more detailed requirements on accessibility, including providing written materials such as large print and Braille documents and information about obtaining sign language interpretation. One commenter recommended that we have a specific section of regulation that addresses access for people with disabilities. A number of other commenters suggested that accessibility standards be required in all modalities that individuals may wish to communicate with States, that is, paper, online, oral communication, and that applications and renewal forms meet the same accessibility standards. A few commenters requested flexibility for States in developing language services requirements as States' populations and needs differ, and one commenter expressed concern that requiring a specific standard for States could pose an unreasonable burden.

Response: We are finalizing, with some modifications, our proposed regulations at § 435.905 and § 435.1200(d) (redesignated at § 435.1200(f)) to provide information and make Web sites accessible to persons who are limited English proficient or have disabilities. Section 435.901 already requires States to comply with the Civil Rights Act of 1964, as well as section 504 of the Rehabilitation Act of 1973, and all other relevant provisions of Federal and State laws, which would include relevant provisions of the Americans with Disabilities Act. Guidance issued in 2003 (68 FR 47311) provides some parameters on language assistance services for persons who are limited English proficient, including oral interpretation and written translation services; this guidance is at *http://www.justice.gov/crt/about/cor/lep/hhsrevisedlepguidance.pdf.* On July 1, 2010 we also issued a State Health

Official Letter (#10–007), available at *http://www.cms.gov/smdl/downloads/SHO10006.pdf,* explaining the enhanced match available for translation and interpretation services in connection with improving outreach to, enrollment of, and use of services by children in Medicaid and CHIP.

In addition to the Civil Rights Act, we believe that the requirements reflected in section 1413 of the Affordable Care Act and section 1943 of the Act, as added by section 2201 of the Affordable Care Act, to establish a coordinated system of eligibility and enrollment across all insurance affordability programs, as well as the specific requirement in section 1943(b)(1)(F) of the Act that States establish procedures for conducting outreach to and enrolling vulnerable underserved populations, including racial and ethnic minorities, would support requiring written translation and oral interpretation.

We modified our proposed § 435.905(b), accordingly, to specify that information for persons who are limited English proficient or have a disability be provided in an accessible and timely manner and at no cost to the individual. For people with disabilities, we specify that accessibility includes auxiliary aids and services. We clarify that application and renewal forms meet the same accessibility standards at § 435.907(g) and § 435.916(g). Note that we make a minor modification to our proposed language in § 435.905(b) to replace the term ''simple and understandable terms,'' with ''plain language'' to align with the language in the Exchange final rule at 45 CFR 155.205(c).

We are not adding specific accessibility standards and thresholds in this final rule, but intend to issue such standards in future guidance, seeking input first from States and other stakeholders about appropriate standards and thresholds. Such guidance will coordinate our accessibility standards with the Exchange, other insurance affordability programs, and across HHS programs, as appropriate, providing more detail regarding literacy levels, language services and access standards.

2. Applications (§ 435.907)

To support States in developing a coordinated eligibility and enrollment system for all insurance affordability programs, we proposed to implement section 1943(b)(3) of the Act, which directs the Secretary to develop and provide States with a single, streamlined application. Accordingly, we proposed to amend the existing ''Application'' provisions at § 435.907 to reflect use of the new single, streamlined application.

Comment: Many commenters requested that we specify that States can continue to use multi-benefit applications. One commenter recommended that CMS only approve State-developed supplemental forms that collect enough information to qualify individuals for any human service program for which they may be eligible.

Response: The intent of the rule is to codify the statutory requirement that there be a single streamlined application for timely enrollment of all eligible individuals in the appropriate health insurance affordability program. An individual must have an option to apply for Medicaid using the Secretary-developed or a Secretary-approved single streamlined application which asks questions relevant only to the eligibility and administration of insurance affordability programs. The regulations do not prohibit use of multi-benefit applications, which may be approved in accordance with § 435.907(b)(2). Use of supplemental forms in conjunction with the streamlined application would be one acceptable approach to assure access to a range of benefits, but States also are permitted to develop alternative multi-benefit applications which do not use supplemental forms. We look forward to working with States interested in developing streamlined multi-benefit applications.

Comment: Some commenters stated that applicants should be able to submit the alternative and supplemental forms for determination of non-MAGI eligibility through the submission modes proposed at § 435.907(d).

Response: States must make application processes accessible for all individuals, and maximize the submission options for individuals being evaluated for eligibility on a basis other than MAGI. All individuals must be able to begin the application process via the Internet Web site, telephone, mail, or in person using the single, streamlined application in accordance with § 435.907(a). States have the option to use supplemental or separate forms for approval of eligibility under a non-MAGI category, as described in § 435.907(c). To the extent practical, those forms should also be accepted by the agency through all submission modes described in § 435.907(a).

Comment: Most commenters supported the requirement for Secretarial approval of a State's alternative single, streamlined application and requested that if a State wishes to make substantive changes, we require an additional approval. Some commenters requested that the Secretarial approval process be flexible.

Response: For States opting to develop an alternative single, streamlined application the statute requires that such applications be approved by the Secretary. To implement this provision, under § 435.907(b)(2), the regulations specify that the Secretary approve the initial application and any substantive change to such application. We intend to be flexible and timely in working with States to secure Secretarial approval of alternative applications that meet the relevant regulations and guidance.

Comment: Some commenters mentioned specific criteria or questions that should be included on the model application and alternate applications, such as information that captures information to elicit eligibility for other Medicaid categories, including coverage under section 1115 waivers, Medicaid Buy-In programs, medically frail criteria or for long-term services and supports, as well as vital applicant information such as AI/AN status. Several commenters provided recommendations on the functioning of an online application, such as using decision tree logic to ask minimum questions, pre-populating the form with information available electronically, and providing a printable copy to applicants.

Response: This input will help inform our work to develop the application and accompanying guidance.

Comment: Some commenters supported the provision in the proposed regulation that alternative and supplemental forms for determination of non-MAGI eligibility must be approved by the Secretary in a manner similar to the single, streamlined application. Other commenters urged against requiring such approval, stating that such forms are already in use and do not require changes in 2014. One commenter suggested that the Secretary publish required data elements for these non-MAGI forms and facilitate best practices via review, but not approval, of non-MAGI applications and supplemental forms. Another commenter suggested delaying requirements for approval until after 2014, given the implementation demands on States over the next two years.

Response: We have revised § 435.907(c) to specify that any application or supplemental form used by a State for determining eligibility on bases other than the applicable MAGI standard meet Secretarial guidelines. These forms must be submitted to the Secretary, and will be available for

review by the public, but will not have to be approved prior to use.

Comment: Many commenters requested that the single streamlined application include a question to screen for potential eligibility on a basis other than MAGI, such as whether an applicant may be disabled, and a notification that applicants have the right to a full Medicaid determination on all bases if desired. A few commenters requested that the application also include an explanation of the benefits of obtaining a non-MAGI determination. Many noted concerns that the Exchange proposed rules would require a screen for non-MAGI eligibility, while this is not explicitly required in the Medicaid Eligibility proposed rule.

Response: We intend to include such questions on the model application, which will support State agencies in fulfilling provisions for appropriate eligibility determinations under § 435.911.

Comment: One commenter advised that the blind and disabled should not be required to complete any forms or provide any information beyond the single streamlined application. The commenter advised that the single, streamlined application ''should include all information necessary to determine eligibility whether based on income or some other criteria.''

Response: Including all questions necessary for non-MAGI determinations on the single, streamlined application would make the application unnecessarily burdensome for the many applicants who will be eligible based on MAGI. We will work with States to design approaches to minimize burdens on all applicants and to help ensure that all eligible individuals are enrolled in the appropriate eligibility category.

Comment: Some commenters questioned and raised concerns about logistics and expense of the requirement for telephonic applications and signatures and requested clarification on CMS' expectations. One commenter mentioned a concern with the requirement to accept applications via facsimile in proposed § 435.907(d)(5) due to a possible lack of privacy inherent in fax submissions. Finally, a commenter expressed concern that the proposed regulations do not account for potential technological changes that may make new submission channels viable.

Response: We anticipate that telephonic applications may be implemented in different ways by States, including through use of a call center that completes the online application in real-time with information obtained from the applicant on the phone. This may reduce expense and logistical difficulty as compared to implementing a new fully-automated telephonic application process. We recognize the need for State flexibility and will be issuing subsequent guidance on this issue that permits States flexibility to design their telephonic application process. In addition, we have deleted specific reference to accepting applications by facsimile in revised § 435.907(a)(5), and have broadened this provision to include acceptance of applications via ''other commonly available electronic means,'' to accommodate changing technologies. Such electronic means may include scanning, imaging, and email processes as well as facsimile. Under the final rule, States are expected to discontinue the use of technologies as they are superseded by newer and more commonly employed mechanisms. Acceptance of signatures along with an application accepted by facsimile may also continue under the authority to accept signatures via other electronic means in § 435.907(f). Requirements to safeguard applicant information at part 431 subpart F apply equally to all applicant information, regardless of the mode of submission.

Comment: Many commenters supported the policy to prohibit in-person interviews as a requirement of eligibility, as discussed in the preamble to the Medicaid Eligibility proposed rule, but requested that the policy be included in regulation text.

Response: We have revised § 435.907(d) to state that ''the agency may not require an individual to complete an in-person interview as part of the application process for a determination of eligibility using MAGI-based income.'' We are also adding corresponding language to § 435.916 to clarify that face-to-face interviews cannot be required as part of a MAGI-based renewal.

Comment: Many commenters strongly supported our proposed regulation to codify previous guidance prohibiting States from requiring an individual who is not applying for an eligibility determination for him or herself (a non-applicant) from providing a Social Security Number (SSN) or information about his or her citizenship or immigration status. Many commenters also supported codification of this policy in CHIP. However, a few commenters noted that verification of MAGI income through the IRS will require an SSN, and expressed concern that without an SSN it may not be possible to determine eligibility for these applicants through real-time processes. A few commenters requested that States be permitted to require an SSN from non-applicants to electronically verify household income of all applicants. A few other commenters requested guidance on how to verify income if a non-applicant has not provided an SSN.

Response: As stated in the preamble of the Medicaid Eligibility proposed rule (76 FR 51161), we are codifying the longstanding policy regarding use of an SSN contained in the Tri-Agency Guidance for Medicaid and CHIP, which is available at *http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html.* The Guidance states that individuals not seeking coverage for themselves who are included in an applicant's or beneficiary's household to determine eligibility of such applicant or beneficiary, may not be required to provide either an SSN or information about their citizenship, nationality or immigration status to avoid deterring enrollment of eligible applicants. Provision of an SSN may occur on a voluntary basis, as discussed below. That policy is grounded in section 1902(a)(7) of the Act, Title VI of the Civil Rights Act of 1964, and the Privacy Act.

If an SSN for a non-applicant household member is not provided, States will need to use other procedures to verify income, in accordance with our verification regulations, as done in States today. We recognize that, in some cases, verification of income without an SSN may not occur in real-time. We also codify this rule in CHIP at § 457.340(b) and have added a definition of ''non-applicant'' at § 435.4.

Comment: Many commenters supported our proposed regulation that sets out conditions if States choose to ask for SSNs of non-applicants on a voluntary basis, stating these conditions are helpful to avoid deterring eligible individuals from applying for coverage and requested that we retain these requirements. A few other commenters noted their concern that in an online application, a non-applicant's SSN would be voluntary and that individuals be provided notice that providing this information is voluntary. A few commenters expressed concern that even permitting States to voluntarily ask for SSNs of non-applicants may deter eligible individuals and their families from applying.

Response: We note that the Medicaid Eligibility proposed rule regarding the voluntary provision of SSNs codifies longstanding policy reflected in the Tri-Agency Guidance discussed above. We are retaining in this final rule the

codification of this policy at § 435.907(e)(3), which will apply to the single streamlined application the Secretary develops under § 435.907(b)(1), as well as other applications and supplemental forms discussed at § 435.907(b) and (c) of this section. We understand the concern that some individuals may be deterred from seeking coverage, even when provision of the SSN for non-applicants is voluntary. However, given the importance of electronic verification of income and other information to reduce burden and achieve real time eligibility determinations for applicants who may have non-applicant household members, we believe that States should be allowed to request, and individuals should have the option to provide, an SSN voluntarily, as long as the conditions set out in our Medicaid Eligibility proposed rule are met in accordance with current policy.

Comment: A number of commenters requested that CMS codify in regulation text the discussion in the preamble of the Medicaid Eligibility proposed rule (76 CFR 51161) that information provided by a non-applicant necessary to determine eligibility of an applicant is considered information ''concerning'' the applicant or beneficiary, and therefore, is protected under confidentiality and safeguard provision of 1902(a)(7) of the Act. Commenters noted that this policy will avoid deterring family members that have eligible applicants.

Response: In § 431.300(b) of this final rule, we have codified our interpretation that information provided by a non-applicant, such as a parent, will be information ''concerning'' the applicant or beneficiary and will be protected to the same extent as applicant or beneficiary information under section 1902(a)(7) of the Act. We also clarify that information of applicants and beneficiaries includes information submitted by a non-applicant. Note that we have replaced the term ''recipient'' with ''beneficiary'' in our final rule, and we intend the terms to have the same meaning. At § 431.305(b), we add SSNs to the list of information for which a State must have criteria and a plan to safeguard, consistent with current policy and other privacy law protections. In the final rule, we also revise proposed § 435.907(e)(2)(ii), redesignated as § 435.907(e)(3)(ii) in this rule, to permit a non-applicant's SSN to be shared with other insurance affordability programs for the purposes of an eligibility determination for those programs.

Comment: A number of commenters requested that we codify in regulation that a State cannot require information that is not necessary to determine eligibility, including asking that we amend our regulations to preclude a State from ''requesting'' information from a non-applicant about his or her citizenship or immigration status. A number of commenters expressed concern that any inquiry about citizenship or immigration status will have a chilling effect on eligible applicants living with household members who are not applying for coverage.

Response: States may only require information that is necessary to make an eligibility determination or that is directly connected to administration of the State plan and we are codifying this longstanding policy in regulation text in revised § 435.907(e)(1) of the final rule. In § 435.907(e)(2), we clarify that, in addition, a State may request information necessary to determine eligibility for another insurance affordability program or other benefit program. States may not request information regarding a non-applicant's citizenship or immigration status under this rule. We also have amended § 435.916(e) to clarify that renewal forms must not collect information that is unnecessary to renew eligibility and that the provisions at § 435.907(e) apply to the renewal process.

Comment: One commenter questioned if proposed § 435.907(e) conflicts with proposed § 435.948(c)(2) (redesignated at § 435.948(c) in the final rule) which requires the agency to request income information by submitting an individual's SSN when it is available.

Response: We do not believe there is a conflict between these provisions. Section 435.948(c) takes into account the possibility that an SSN may not be available, which is consistent with § 435.907(e).

Comment: One commenter suggested that we include in regulation the legal sources and bases for the policy outlined in § 435.907(e), such as the section 1902(a)(7) of the Act, the Civil Rights Act of 1964, Privacy Act, and Tri-Agency Guidance. The commenter suggested we also include those sources in Medicaid and CHIP regulation for application and redetermination at § 435.907, § 435.916, § 457.330, and § 457.335.

Response: The applicability of section 1902(a)(7) of the Act to non-applicant information is specified at § 431.300. Further, our current regulation at § 435.901 requires compliance with Title VI of the Civil Rights Act of 1964 and other Federal laws. Thus, while we have discussed the statutes and guidance in the preamble to this final rule, we do not think that it is necessary to further cite the other recommended statutes and guidance in our revisions to the regulations.

3. Assistance With Application and Renewal (§ 435.908)

We proposed to amend the provisions of § 435.908 to ensure that the agency provide assistance through a variety of means to aid individuals seeking help with the application or redetermination process. We also proposed that States have flexibility to design the available assistance, while assuring that such assistance is provided in a manner accessible to individuals with disabilities and individuals who are limited English proficient. In this final rule, we are switching the order of § 435.908 (a) and (b).

Comment: Some commenters requested that we clarify the difference between assisters and authorized representatives and specify what authorized representatives can do.

Response: There is a difference between an application assister and an authorized representative both in the way that they are designated by the applicant, as well as the permissions that are given within the application and renewal processes. In general, application assisters are staff and volunteers of organizations authorized by the State Medicaid agency or State CHIP agency to provide assistance to individuals with the application and renewal process, at the request of the applicant/beneficiary. The activities of assisters generally include providing information on insurance affordability programs and coverage options, helping individuals complete an application or renewal, and gathering required documentation. In contrast, an applicant may designate an authorized representative who may act on behalf of the applicant or beneficiary including signing the application and receiving notices. Regardless of whether an applicant or beneficiary has selected an assister or designated an authorized representative, the agency must provide the assistance described in § 435.908(a). Additional information about the potential roles and responsibilities of authorized representatives and assisters will be provided in subsequent guidance. We anticipate that if individuals who help with application and renewal processes as provided in § 435.908(b) are not recognized by a State agency, not officially designated as authorized representatives and not permitted to submit an application as provided in § 435.907(a), then such individuals will not have access to sensitive applicant and beneficiary

information, consistent with confidentiality regulations in 42 CFR part 431 subpart F and the statutory protections that apply to IRS data.

Comment: One commenter noted that in their State a doctor's note is currently required for an individual to appoint an authorized representative.

Response: Such a requirement is not consistent with current longstanding regulations at § 435.907 and § 435.908 as revised in this rulemaking. Legally competent applicants and beneficiaries must be permitted to designate representatives of their choosing and authorization from a physician is not a prerequisite for such a designation. In addition, we have further clarified at § 435.907(a) the situations in which the State Medicaid agency must accept an application from someone acting responsibly on behalf of an applicant.

Comment: Most commenters expressed strong support for the requirements in proposed § 435.908(b) for agencies to provide assistance in multiple modes. Some commenters requested that we specify that assistance must be provided during and outside normal business hours, or through specific mechanisms such as internet kiosks. One commenter stated that assistance from community-based organizations is far more effective than a State's customer service telephone line.

Response: While it is important to have a range of assistance opportunities available, we do not believe that our regulations should be revised to provide additional specificity as to the manner in which the Medicaid agency provides assistance. Assistance provided by other entities is outside the scope of this rulemaking.

Comment: Some commenters suggested that the rule should codify outreach requirements to vulnerable and underserved populations, as required by section 1943(b)(1)(F) of the Act. Some emphasized the importance of addressing the unique needs of certain populations, such as those with mental illness and substance abuse disorders. Others asked that certain organizations and places be specifically recognized as key providers of application assistance and outreach, such as hospitals, Federally Qualified Health Centers (FQHCs), and correctional facilities. Some commenters noted the potential to leverage Medicaid outstationing requirements to provide outreach. Some commenters inquired about Federal funding for outreach.

Response: We did not propose any new outreach requirements and, at this time, we are not codifying new outreach requirements. We recognize the importance of outreach, and we intend to inform States of all available options to obtain Federal funding for outreach activities as we work together to move ahead with implementation of these changes.

Comment: One commenter noted that if an individual is found ineligible for all insurance affordability programs, then he or she should be referred to a consumer assistance program or navigator who can provide information on obtaining coverage outside the Exchange.

Response: We do not have the authority to require agencies to provide assistance in obtaining coverage other than through the Exchange, Medicaid and CHIP and the BHP, if applicable.

Comment: Several commenters wrote about the relationship between § 435.908 and the requirements in 45 CFR 155.205 on Medicaid and CHIP assistance via Exchange Navigators. Some commenters suggested a requirement that Medicaid and CHIP application and renewal assistance meet the same criteria required for Exchange assistance. One commenter inquired whether States may combine these programs.

Response: The Medicaid agency is responsible for fulfilling the requirements of the Medicaid regulations at § 435.908. The assistance which Medicaid agencies provide under § 435.908 is distinct from that provided by Exchange Navigators in accordance with 45 CFR 155.210 of the final Exchange regulation. Some aspects of applicant and beneficiary assistance may be integrated with the consumer assistance tools and programs of the Exchange. For example, a State may choose to operate one application assistance call center or one applicant assistance online chat feature.

Comment: Many commenters encouraged the Secretary to measure the effectiveness of the assistance efforts and State agency performance by looking at criteria including call abandonment, call wait times, number of days to wait for an in-person assistance appointment, and waiting time for online assistance.

Response: As noted in the preamble to the Medicaid Eligibility proposed rule, we intend to develop performance and processing standards for many aspects of the application and eligibility determination process in consultation with States, consumer groups and other stakeholders. We will consider these recommendations in developing such standards.

Comment: Many commenters expressed strong support for our proposed regulation at § 435.908(b) to have States provide assistance to persons with disabilities and those who are limited English proficient who seek help with the application or redetermination process. Some commenters made recommendations to make the types of assistance required more specific, such as including oral interpretation, sign language interpreters, Braille and large print, and translated materials. A few commenters also suggested that we require that any assistance to persons who are limited English proficient be provided in a culturally competent manner. A few commenters recommended codifying a duty to assist when an applicant reports the existence of a disability, consistent with the requirements of the Americans with Disabilities Act.

Response: We have revised § 435.908 to align with our modifications in § 435.905. Individual who are limited English proficient or have disabilities should be provided assistance in an accessible manner. We are not addressing specific components of assistance such as cultural competence or a duty to assist in this rule, but will consider these comments as we develop subsequent guidance on these issues. For more detail regarding accessibility, see the discussion in section III.E.1. of the preamble.

F. MAGI Screen (§ 435.911)

Consistent with sections 1902(a)(4), (a)(8), (a)(10(A), (a)(19), and (e)(14) and section 1943 of the Act, in § 435.911, we described a new simplified test for determining eligibility based on MAGI. We also proposed several pertinent definitions, including ''applicable MAGI standards,'' which will be at least 133 percent of the FPL, but in some States, based on State-established standards, may be higher for pregnant women, children, or in a few States, parents and caretaker relatives. These and other proposed provisions are discussed in more detail in the Medicaid Eligibility proposed rule (76 FR 51161 and 51162).

Comment: We received many comments on the eligibility of individuals with disabilities and those needing long-term services and supports under the Medicaid Eligibility proposed rule. Under the Medicaid Eligibility proposed rule, if an applicant is eligible based on the applicable MAGI standard, a State would not determine whether that person is also eligible under an optional group (for example, for blind or disabled individuals). Many commenters appreciated the ability of everyone with income below the applicable MAGI standard to be quickly and efficiently determined eligible for coverage without regard to disability

status or need for institutional or other long-term services and supports. However, commenters uniformly were concerned that individuals who qualify for coverage using current methodologies under an optional group for disabled individuals or an optional group covering institutional or other long-term services and supports would be adversely impacted under the Medicaid Eligibility proposed rule, because such individuals would be required to enroll for coverage in the adult group at § 435.119 and the commenters were concerned that eligibility under the adult group would not meet their benefit needs to the same extent as eligibility under the optional eligibility groups.

A few commenters noted the operational difficulty States may have in ensuring that persons needing long-term services and supports are placed in the most appropriate eligibility category. Many commenters stated that the Medicaid Eligibility proposed rule was inconsistent with Medicaid requirements that beneficiaries eligible for more than one category may choose to have their eligibility determined under either category and that States determine eligibility in the ''best interest'' of Medicaid beneficiaries. At least one commenter suggested that all individuals in need of long-term services and supports be exempted from using the MAGI methodology or be given the option to apply for long-term services and supports under existing methodologies.

Response: We have revised the policy in this final rule to ensure that individuals who meet the eligibility requirements for coverage based on the applicable MAGI standard (for example, under the new adult group at § 435.119) and who also meet the requirements for coverage under an optional eligibility group excepted under section 1902(e)(14)(D) of the Act from the application of MAGI methods may enroll in the optional eligibility group. As discussed in Section B of the preamble, we are interpreting the exception from application of MAGI-based methods at sections 1902(e)(14)(D)(i)(III) and 1902(e)(14)(D)(iv) of the Act, codified at § 435.603(j)(3) and (j)(4) of this final rule, to apply for the purpose of determining eligibility on the basis of disability or being blind or for an eligibility group under which long-term services and supports are covered. Individuals who meet the eligibility requirements for coverage based on the applicable MAGI standard nonetheless may be excepted from application of MAGI methods for purposes of evaluation under an optional eligibility group which better meets their coverage needs. Until eligibility on such other basis is determined, such individuals are not precluded from enrolling in the program under the new adult group (or other eligibility group, such as for children or pregnant women) based on MAGI. However, while no individual may be required to provide additional information needed to determine eligibility based on disability or another MAGI-excepted basis, once eligibility on such basis is established, the individual would no longer be eligible for Medicaid on the basis of MAGI (unless his or her circumstances changed), but would enroll in the program on the MAGI-excepted basis.

Under this final rule, individuals who meet the eligibility criteria for coverage based on the applicable MAGI standard will be able to receive coverage on that basis while they undergo a final determination of eligibility based on eligibility for an optional group covering long-term services and supports. Beneficiaries enrolled in coverage under a MAGI-based eligibility group also will be able to move to an optional group based on a disability or long-term care needs should their circumstances change. Consistent with current rules at § 435.905(a) and in accordance with § 435.911(c)(2), States must determine eligibility under a basis other than MAGI for an individual described in § 435.911(d), which includes individuals who indicate such potential eligibility on the single streamlined application, alternative application or renewal forms, as well as those who request such a determination. In addition, in accordance with current regulations at § 435.905, States must provide information to applicants and beneficiaries about the different eligibility options and benefit packages to enable them to make an informed decision about seeking coverage under other eligibility groups which may better meet their needs.

This policy change is implemented through revisions to the regulatory provisions relating to the MAGI screen at proposed § 435.911 and to the regulatory provisions relating to the exceptions from MAGI-based financial methodologies proposed at § 435.603(i)(3) and (i)(4) in the Medicaid Eligibility proposed rule (redesignated at § 435.603(j)(3) and (j)(4) in this final rule). Revisions at § 435.603(j) are discussed in section III.B. of the preamble. For § 435.911, paragraphs (a) and (b), which set forth the statutory basis and applicable MAGI standards for the eligibility categories described at § 435.110, § 435.116, § 435.118, § 435.119, and § 435.218, remain unchanged. In § 435.911(c), we retain our proposed language that this paragraph applies to individuals who submit an application described in § 435.907 and meet the non-financial eligibility criteria or are determined eligible for Medicaid under a reasonable opportunity period to verify citizenship or immigration status. We have also added language to paragraph (c) to clarify the responsibility of the agency to apply § 435.911 to individuals whose eligibility is being renewed in accordance with § 435.916. Note that the process for determining eligibility set forth in § 435.911 will not apply at initial enrollment to so-called ''auto-eligibles'' who are not required to file an application described in § 435.907—for example, individuals who are automatically eligible for Medicaid due to receipt of SSI or benefits under title IV–E of the Act and newborns deemed eligible under section 1902(e)(4) of the Act and § 435.117 of the regulations.

We are revising § 435.911(c)(1) to provide that the State must furnish Medicaid promptly and without undue delay, consistent with timeliness standards established under § 435.912, to individuals (including children, pregnant women, parents and caretaker relatives and certain adults under age 65 not eligible for Medicare) who are at or below the applicable MAGI standard. In the case of individuals who may be eligible on a basis other than the applicable MAGI standard (for example, based on disability), the obligation under § 435.911(c)(1) can be met either by promptly determining an individual eligible based on the applicable MAGI standard and providing benefits on such basis and then exploring eligibility for other eligibility categories excepted from MAGI methods, as appropriate, or, if possible to achieve promptly and without undue delay, by first determining eligibility on the MAGI-excepted basis.

Paragraph (c)(2) of § 435.911 is revised to ensure that States also determine eligibility for Medicaid on a basis other than the applicable MAGI standard in the case of the following individuals, described in a new paragraph (d) which includes: (1) Individuals whom the agency identifies on the basis of information contained in the single streamlined application used for all insurance affordability programs or renewal form described in § 435.916(a)(3), or on the basis of other information available to the State, as potentially eligible on a basis other than the applicable MAGI standard; (2) Individuals who submit an alternative application designed for MAGI-excepted

populations; and (3) Individuals who otherwise request a determination of eligibility on a basis other than the applicable MAGI standard. Under § 435.911(c)(2), the Medicaid agency will need to collect such additional information as may be needed to determine eligibility on such other basis in accordance with our regulations at § 435.907(c). Note that § 435.911(c)(2) applies to both individuals with MAGI-based household income at or below the applicable MAGI standard, as well as to those with MAGI-based household income above the applicable MAGI standard. In the case of individuals with income above the applicable MAGI standard, paragraph (c)(2) also applies to the determination of eligibility under optional eligibility groups subject to MAGI-based methods—for example, optional coverage of children receiving State adoption assistance in families with income above the applicable MAGI standard for children in the State, as well as optional groups excepted from MAGI methods.

Finally, although the comments received and the discussion above focus on the implications of § 435.911 for individuals with disabilities and those needing long-term services and supports, we note that § 435.911(c) applies also in the case of individuals who may be excepted from the application of MAGI-based methodologies on other bases, including medically needy individuals eligible under section 1902(a)(10)(C) of the Act and 42 CFR part 435, subparts D and I of the regulations, excepted from MAGI-based methods at § 435.603(j)(6) and women screened under the Centers for Disease Control and Prevention (CDC) breast and cervical cancer early detection program, eligible under sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act, excepted from MAGI-based methods at § 435.603(j)(1).

Section § 435.911(c)(3), redesignated from § 435.911(c)(2)(iii), relates to coordination of eligibility with the Exchange when an individual is ineligible for Medicaid based on the applicable MAGI standard, but is undergoing a Medicaid determination on another basis. In paragraph (c)(3), we have revised the cross-reference to our regulations at § 435.1200(e) to reflect revisions to § 435.1200 in this final rule, and the text at paragraph (c)(3) is not substantively modified.

Comment: Some commenters requested that State Medicaid agencies be required to screen for the Part D Low-Income Subsidy (LIS) program, although they acknowledged that LIS is not included in the insurance affordability program definition. One commenter stated that required screenings should include potential Medicare Savings Program (MSP) eligibility.

Response: Since LIS is not defined in the Affordable Care Act as an insurance affordability program, these rules cannot require a State to screen for it. In addition, nothing in our regulation changes already existing requirements for States to determine an individual's eligibility on the most advantageous basis including eligibility for Medicare Savings Programs.

Comment: One commenter suggested the final rule should require States to screen for pregnancy-related coverage, eligibility for women with breast or cervical cancer, eligibility for family planning services, and that States otherwise should provide information to individuals about all of the available coverage options.

Response: Eligibility for pregnant women with income below the applicable MAGI standard is included in determination of eligibility under § 435.911(c)(1). As noted above, § 435.911 applies to all individuals described in § 435.911(d), including individuals such as women with breast or cervical cancer, and States will be expected in accordance with § 435.905, to provide individuals with sufficient information to make an informed choice about requesting a determination on a basis other than the applicable MAGI standard.

Comment: A few commenters requested clarification regarding the treatment of parents and caretaker relatives who may be eligible under an optional group for parent or caretaker relatives or for better benefits under section 1931 of the Act and § 435.110 than the benchmark benefits that may be offered to individuals in the adult group.

Response: In furnishing medical assistance to individuals whose MAGI-based income is at or below the applicable MAGI standard in accordance with § 435.911(b) and (c)(1), States will need to ensure that individuals are enrolled in the categories for which they are eligible and covered for the relevant benefits. Parents and caretaker relatives with income below the standard applied by the State under § 435.110, should be enrolled for coverage in accordance with that section. Parents and caretaker relatives who meet both the eligibility requirements for coverage under an optional group for parents and caretaker relatives and for coverage under the new mandatory adult group will be enrolled under the new adult group. If the State covers optional parents and caretaker relatives up to an income standard higher than 133 percent of the FPL, such individuals would be enrolled in the optional group in accordance with § 435.911(c)(2).

Comment: Several commenters also requested clarification on how eligibility under the new optional group for individuals above 133 percent of the FPL under section 1902(a)(10)(A)(ii)(XX) of the Act, codified at § 435.218 of the regulations, fits into the MAGI screen in § 435.911.

Response: If a State has elected to cover the optional group codified at § 435.218 for individuals with income above 133 percent FPL, the income standard applied by the State to this group is incorporated into the applicable MAGI standard under § 435.911(b)(1)(iv).

Comment: One commenter asked for clarification of whether proposed § 435.911(b)(1)(i) contradicts § 435.110(c) that describes the income standard for parents and caretaker relatives.

Response: Parents and caretaker relatives certainly will be eligible if their MAGI-based income is below 133 percent of the FPL—under either the new adult group at § 435.119 or under the mandatory group for parents and caretaker relatives at § 435.110. Typically, the income standard for coverage of parents and caretaker relatives under § 435.110(c) will be less than 133 percent of the FPL, but if higher, the applicable MAGI standard under § 435.911(b)(1) will be such higher standard.

Comment: Some commenters stated that the proposed regulations have constructed two different doors to access health care which will result in different outcomes for the applicant depending on which door the applicant enters through. The commenters stated that the proposed rules for the Exchange generally require a basic screening for Medicaid on bases other than the applicable MAGI standard, whereas the proposed Medicaid rules at § 435.911 require a full Medicaid eligibility determination only when an applicant is not found eligible for ''MAGI-based Medicaid,'' by which we assume the commenters mean that the applicant's income exceeds the applicable MAGI standard. The commenters question the utility of the ''basic screen'' by the Exchange, since all cases in which the Exchange screens individuals as potentially eligible on a basis other than the applicable MAGI standard will be referred to Medicaid for further evaluation, but the Medicaid agency will not evaluate eligibility on such other bases if the individual has income at or below the applicable MAGI

standard. In addition, the commenters stated that even if the Exchange's screening questions are identical to Medicaid's eligibility questions, a person who could have been found Medicaid eligible may not complete the Medicaid eligibility determination process after he or she has enrolled in a QHP with subsidized premiums.

Response: The ''basic screen'' is designed to allow a streamlined eligibility process by which individuals applying through the Exchange can get real-time eligibility determinations, either by the Exchange or the Medicaid agency, without having to wait for the Medicaid agency to review and make a determination based on disability or other MAGI-excepted bases that may take longer to complete. Regardless of which entity initially handles the application, all individuals will be treated the same. Under § 435.911 and § 435.1200(d) and the Exchange final regulation at 45 CFR 155.345, both individuals with income at or below the applicable MAGI standard as well as those with income above the applicable MAGI standard will be considered on other bases by the Medicaid agency, consistent with § 435.911(c)(2). Under the Exchange final regulation at 45 CFR 155.345, for an applicant who is not eligible for Medicaid based on the applicable MAGI-based standard, using the single streamlined application, the Exchange will assess the information provided by the applicant on his or her application for potential Medicaid eligibility based on factors other than the applicable Medicaid MAGI-based income standard. In accordance with 45 CFR 155.345(e) of the Exchange regulation and § 435.911(c)(3) and § 435.1200(e)(2) of the Medicaid regulation, such individuals will be permitted to enroll in a QHP through the Exchange and receive APTCs until Medicaid notifies the Exchange that the applicant is eligible for and enrolled in Medicaid. Similarly, under § 435.911(c)(3) and § 435.1200(e)(2), individuals who submit a streamlined application to the Medicaid agency and who have MAGI-based income above the applicable MAGI standard, but who may be eligible for Medicaid on another basis, will be able to enroll through the Exchange and receive APTCs pending completion of the Medicaid determination on bases other than the applicable MAGI standard. Individuals with MAGI-based income at or below the applicable MAGI standard also will be treated the same regardless of which program receives the initial application, as the Medicaid agency will be responsible, under § 435.1200(c)(2) and (d)(3) of this final rule, for ensuring that individuals who apply to the Exchange but have income at or below the MAGI standard are evaluated for coverage on other bases in accordance with § 435.911(c)(2) to the same extent as similarly-situated individuals who submit an application directly to the Medicaid agency.

Comment: One commenter requested clarification of the retention of the provisions at § 435.608 that require applicants to take necessary steps to obtain other benefits such as any annuities, pensions, retirement, and disability benefits, to which they are entitled. The commenter requests that CMS consider these requirements when creating the single, streamlined application.

Response: There is nothing in this rule that changes § 435.608, but we note that States may not delay approval of an individual's eligibility for the Medicaid program based on this provision.

Comment: Several commenters asked who bears the financial liability for benefits costs incurred for individuals incorrectly determined eligible for Medicaid by another insurance affordability program.

Response: Nothing in this rule affects the financial liability requirements under the Medicaid program. The Medicaid agency is responsible for assuring quality in the Medicaid program, including exercising oversight and taking any necessary actions to correct errors in the program, as affirmed in the single State agency regulation at § 431.10. For more discussion of the oversight responsibilities of a State agency, see the discussion in section III.K. of this preamble. Regulations governing the MEQC or PERM programs also remain in effect and, as noted, we will be reviewing these rules to ensure alignment with the rules issued under this regulation and the development of a coordinated eligibility and enrollment system involving all insurance affordability programs. There is no recoupment of funds between insurance affordability programs for individuals placed in the incorrect program.

Comment: One commenter understands that individuals with household income at or below the applicable MAGI standard could be declared presumptively eligible for Medicaid benefits promptly and without undue delay. One commenter asked about costs incurred during a presumptive eligibility period.

Response: Coverage provided to an individual based on MAGI who might then be moved to a different eligibility category, for example based on disability, is not based on presumptive eligibility. These individuals are fully eligible for Medicaid based on MAGI standards, even if they ultimately might be found eligible under another eligibility category. These rules do not modify the presumptive eligibility rules that currently apply under the Medicaid program, or address new rules relating to presumptive eligibility enacted under the Affordable Care Act.

Comment: Many commenters requested clarification as to whether the term ''as needed'' in § 435.911(c)(2) is meant to limit what additional information may be collected from an applicant to that information that is required to make a determination of eligibility on a basis other than the applicable MAGI standard, as opposed to limiting States' discretion to request information that is not relevant to the determination of Medicaid eligibility on such bases.

Response: Information that is not necessary to make an eligibility determination cannot be required. The phrase ''as needed'' in § 435.911(c)(2) (revised to read, ''as may be needed'' in the final rule) refers specifically to information that the agency does not have—for example, based on the information received through the single, streamlined application used by all insurance affordability programs—but which is needed to determine eligibility on a basis other than the applicable MAGI standard. Collection of additional information needed to determine eligibility on a basis other than the applicable MAGI standard, in accordance with § 435.907(c), would be appropriate.

Comment: A number of commenters requested further guidance on what ''promptly and without undue delay'' means, and how such standard relates to the current 45 and 90 days application processing timeframes set forth in existing regulations at § 435.911 (redesignated as § 435.912 in this rule), and of the impact on the MAGI-exempt populations.

Response: Existing regulations at § 435.911 (redesignated at § 435.912 in this rule as interim final for which we soliciting comments), provide that State Medicaid agencies establish timeliness standards for determining eligibility, not to exceed 90 days in the case of individuals applying for coverage on the basis of disability, and 45 days in the case of all other applicants. As discussed in section III.D. of this preamble, we are revising § 435.912 to provide further parameters on the standards regarding the adjudication of eligibility which States are directed to establish under the regulations. Revised

§ 435.912(b) and (c) provide that such standards both may not exceed the current 90 and 45 day limit for any individual applicant and must also provide for prompt eligibility determinations across the pool of individuals seeking coverage.

Comment: One commenter requested clarification of whether States still need to determine eligibility for emergency services for non-qualified immigrants who do not qualify for full Medicaid benefits but are eligible for enrollment in coverage through the Exchange with APTC. The commenter stated that it is inappropriate for taxpayers to cover both Federal emergency services and subsidized insurance premiums for non-qualified immigrants.

Response: Nothing in the Affordable Care Act changes the requirement that States provide emergency services to individuals not eligible for full Medicaid benefits due to their immigration status, and States will still need to determine eligibility for emergency services for such populations. To the extent that any such individuals have insurance, either through the Exchange or otherwise, Medicaid would pay secondary to that insurance, so there would be no duplication of coverage. Whether immigrants who are enrolled in Medicaid for coverage of emergency services only can qualify for APTC is a separate question relating to the definition of ''minimum essential coverage'' under section 5000A(f) of the IRC, and is beyond the scope of this rulemaking.

G. Coverage Month (§ 435.917)

In the Medicaid Eligibility proposed rule, we noted that under the Exchange proposed rule at § 155.410, enrollment in the Exchange for individuals terminated from Medicaid would begin at the earliest on the first day of the month following the date the individual loses Medicaid eligibility and is determined Exchange-eligible. Under the Exchange proposed rule, if the individual was terminated from Medicaid or CHIP after the 22nd of the month, Exchange enrollment would begin at the earliest on the first day of the second month after the termination date. To help address the potential for a gap in coverage, the final Exchange rule at 45 CFR 155.420(b)(2)(ii) will allow individuals enrolling through a special enrollment period, including those losing Medicaid or CHIP, to enroll by the first day of the following month, provided plan selection is completed by the end of the month of termination from Medicaid or CHIP. Therefore, beneficiaries terminated, for example, on the 31st of the month may be able to enroll as early as the next day in Exchange coverage. Nonetheless, for beneficiaries terminated earlier, a gap in coverage could still occur for a period that could last close to a full month if States do not extend Medicaid or CHIP coverage until the end of the month.

We noted that directing State Medicaid and CHIP programs to extend coverage until the end of the month in which coverage is terminated could help promote continuity of coverage, and requested comments on whether the benefits of doing so outweigh the costs of imposing such a requirement. Current Medicaid and CHIP regulations are silent regarding whether a State must end eligibility on the day that an individual is determined no longer eligible for assistance, subject to the Medicaid and CHIP notice provisions, or whether coverage may continue until the end of the month, although in practice we believe many States continue coverage until the end of the month.

Comment: Comments on this issue were mixed, with some commenters expressing support for and others opposition to a policy requiring coverage to the end of the month in which eligibility otherwise would terminate. Numerous commenters voiced strong support for a policy of extending coverage to align with Exchange coverage months to prevent gaps in coverage. The commenters noted that even small disruptions in coverage can have significant medical and financial consequences, especially for individuals with chronic conditions and/or needing medication. Some commenters stated that additional time would also allow States to correct for inaccurate terminations (for example, if a pre-populated renewal form goes to the wrong address). A few commenters noted that many States already operate in this manner for managed care enrollees. One commenter stated that there are precedents for such a policy, already including pregnant women, whose coverage extends at least 60 days post-partum; parents who are provided Transitional Medical Assistance (TMA) for several months after becoming ineligible; and children in States with continuous eligibility policies. Some commenters familiar with States that already have a health insurance exchange urged extending the coverage month, citing communication and systems problems for individuals moving between Medicaid and an Exchange and urged that Medicaid coverage be extended until the individual is actually enrolled in the Exchange. Several commenters cited to churning studies. One commenter suggested that extending coverage was consistent with Medicaid's role as a safety net provider.

Conversely, several commenters stated that States must have flexibility to end coverage at any time during the month. They were concerned that the costs could be significant if we required otherwise. One commenter urged that the Federal government provide 100 percent FFP for gaps in coverage if Medicaid is extended to smooth transitions. Another commenter suggested we adopt exceptions to any coverage month requirement in the event of beneficiary death, fraud (allowing termination with a 5-day notice as in current policy), extension of eligibility pending appeal if the beneficiary does not prevail in the appeal (immediate termination), incarceration, when an individual moves out of State has been determined eligible in the new State, and if private insurance is available and the person can be enrolled in such coverage.

Finally, some commenters gave alternative suggestions to solve the potential gap in coverage. Some commenters suggested extending the notice period for termination—so that termination does not take effect until at least the last day of the current month, if such notice is provided prior to the 12th, or the last day of the subsequent month if notice is on the 12th or later. One commenter also suggested that CMS offer to defray medical expenses for patients who experience gaps in coverage when they move from Medicaid to the Exchange. The same commenter also suggested requiring Exchange coverage to begin the day after Medicaid coverage terminates, rather than the first day of the subsequent month—even if the individual forgoes premium credits or cost-sharing until the following month. Another commenter suggested allowing individuals ineligible for Medicaid but eligible for premium subsidies to continue enrollment in their Medicaid health plan on an opt-out basis, even after a determination of ineligibility for Medicaid, without requiring the plan to meet Exchange requirements to minimize disruptions in coverage.

Response: The final Exchange rule has been revised at 45 CFR 155.420(b)(2)(ii) to allow an individual to enroll in an Exchange plan, regardless of what point in the prior month the individual has been terminated, will partially close the coverage gap. In this final rule, we will not require the extension of Medicaid and CHIP through the end of the month, but we encourage States to fill the gap by providing coverage through the end

of the month that an individual is terminated from coverage, as many States do today. We note that for States that choose to do this, FFP at the applicable match rate will be available for this extended coverage.

Comment: One commenter requested that CMS consider allowing extensions of coverage through the end of the month for individuals terminated from Exchange coverage who become Medicaid eligible. Allowing a recipient to remain in the Exchange until the end of the month and permitting Medicaid to start at the beginning of the next calendar month would prevent duplication in eligibility periods and possible double payment of Federal funds.

Response: The Exchange final rule at 45 CFR 155.430(d)(2)(iv) provides that the last day of coverage is the day before coverage in Medicaid, CHIP, or the BHP if applicable begins. This rule is intended to minimize gaps in coverage for individuals moving from Exchange coverage to Medicaid.

Comment: One commenter suggested that retroactive coverage is no longer needed and that CMS should remove this requirement.

Response: The Affordable Care Act did not make any change to the retroactive coverage provisions in the Act. For MAGI populations applying for Medicaid coverage, retroactive eligibility means that the effective date of such coverage can be up to three months prior to the date of the application if covered services have been rendered at any time during that time period, in accordance with § 435.914.

H. Verification of Income and Other Eligibility Criteria (§ 435.940, § 435.945, § 435.948, § 435.949, § 435.952, and § 435.956)

In the Medicaid Eligibility proposed rule, we proposed amendments to 42 CFR part 435 subpart J to make verification processes more efficient, modern, and also coordinated with the Exchange policies in proposed 45 CFR 155.315 and 155.320 (76 FR 51231 through 51234). In general, our proposed rules maximized reliance on electronic data sources, shifted certain verification responsibilities to the Federal government, and provided States flexibility in how and when they verify information needed to determine Medicaid eligibility. The proposed changes drew from successful State verification systems and strategies. The major changes proposed included:

- In accordance with section 1413(c) of the Affordable Care Act, all insurance affordability programs will use an electronic service established by the Secretary (''Federal data services hub'') through which they can corroborate or verify certain information with other Federal agencies (for example, citizenship with the Social Security Administration (SSA), immigration status through the Department of Homeland Security (DHS), and income data from the IRS).
- Consistent with current policy, State Medicaid agencies may accept self-attestation of all eligibility criteria, with the exception of citizenship and immigration status. States would continue to comply with the requirements of section 1137 of the Act to request information from data sources when determined useful by the State to verifying financial eligibility. (In this final rule, we also clarify that self-attestation would not be permitted in contravention of any legal requirement.)
- In verifying eligibility States would rely, to the maximum extent possible, on electronic data matches with trusted third party data sources rather than on documentation provided by applicants and beneficiaries. Additional information, including documentation, may be requested from individuals only when information cannot be obtained through an electronic data source or is not ''reasonably compatible'' with information provided by the individual.
- A new provision at § 435.956 relating to verification of non-financial eligibility criteria was added that similarly places primacy on electronic third party data sources.
- A number of prescriptive provisions in current regulations as to when or how often States must query certain data sources, or when certain State wage agencies must provide data to the State Medicaid agency were deleted.

These and other proposed revisions are discussed in more detail at 76 FR 51162 through 51165.

Comment: One commenter believed that the verification requirements for predictable changes in income in § 435.603(h) should be no more cumbersome than those required for income at initial application or redetermination, and recommended that individuals be able to provide verification through such means as a signed employment contract or a history of fluctuations (for example, past small-business revenue statements).

Response: The verification regulations apply both to current, as well as predictable future changes in income so States should apply the same standards to both. In appropriate circumstances, and depending on State policies, the verification suggested by the commenter would be permitted under the regulation.

Comment: One commenter suggested that the final regulations should expressly permit States to use Express Lane eligibility for adults, as well as children, and that there should be no sunset to the option.

Response: Section 1902(e)(13) of the Act provides States with an option to accept findings relating to a factor of eligibility made by an ''Express Lane agency'' in determining the eligibility of a child for Medicaid. Findings of income made by an Express Lane agency under this option are excepted from application of MAGI-based methodologies in section 1902(e)(14)(D)(i)(I) of the Act, codified at § 435.603(j)(1) in the final rule. The authority under section 1902(e)(13) of the Act is scheduled to sunset on September 30, 2013. Extending this authority to adults or beyond the sunset date provided in the Act is not authorized by the statute, and therefore, is beyond the scope of this regulation; however, subject to CMS approval, States may be able to develop a process similar to that provided under section 1902(e)(13) of the Act through a demonstration if the requirements of section 1115 of the Act are met.

Comment: We received many comments that paragraph (a) under § 435.945 should be removed because restating the objective of program integrity in such broad terms weakens the regulation by allowing a broad and vague exception to all provisions of the regulation if any program integrity interest can be identified by a State. While the commenters support program integrity, they are concerned that a State could use proposed § 435.945(a) to justify creating burdensome barriers in enrollment procedures, such as requiring paper documentation, which may result in preventing even larger numbers of eligible individuals from obtaining coverage. A number of other commenters suggested that any State which chooses to not implement provisions in the verification regulations to maintain program integrity should be required to demonstrate that program integrity is threatened, document how the alternative process will improve program integrity, and get approval from the Secretary.

Response: Compliance with the verification regulations is not at State option and we do not believe reference to existing program integrity provisions in these regulations will in any way undermine the verification regulations. However, to make it clear that program integrity regulations apply broadly and

independently and do not undermine the regulations relating to verification, we have moved the reference to program integrity to § 435.940 in the final rule and redesignated the paragraphs in § 435.945 accordingly. We also added language at § 435.940 that States must provide for methods of administration that are in the best interest of applicants and beneficiaries and are necessary for the proper and efficient operation of the plan, consistent with § 431.15 of this subchapter and section 1902(a)(19) of the Act. We also have added provisions to clarify the intent of the Medicaid Eligibility proposed rule that electronic sources be consulted where possible and available—this policy limits use of documentation only to situations when necessary and appropriate and we revised § 435.952 accordingly, as discussed below.

Comment: Some commenters believed that the Medicaid Eligibility proposed rule requires reliance on self-attestation and electronic data sources to a greater extent than is required today and that this will undermine program integrity and impede States' ability to achieve local policy and operational objectives, as well as meet Federal error rate standards. Other commenters support the express permission to rely on self-attestation provided in the proposed regulations, and many believed that the regulations did not go far enough in limiting the use of paper or other documentation, especially for vulnerable populations, and that States should have to show a program integrity concern before requesting paper documentation. One commenter urged that we provide guidance on how a highly automated eligibility system can function in the absence of a considerable degree of self-attestation.

Response: Within the boundaries established under the statute and these regulations, States retain flexibility to establish verification procedures to be applied in their States. However, self-attestation should not be permitted where the law would not permit it. We have modified our regulations so that States would have the option, but are not mandated to accept self-attestation unless the statute requires other procedures (such as in the case of citizenship and immigration status). As explained further below, self-attestation would be required for pregnancy, for which a State may seek additional information only if it has information not reasonably compatible with the individual's attestation.

The proposed regulations would place greater reliance on data-based verification as opposed to documentation required from individuals, consistent with the direction that many States have been taking and the requirements in the Affordable Care Act for a streamlined and efficient eligibility determination system. The increased availability of electronic data matching together with the 90 percent Federal match that may be available if certain conditions are met for systems investment under 75 FR 21950, and the provisions in the Affordable Care Act to create a coordinated and efficient eligibility and enrollment system across insurance affordability programs, all support increased reliance on electronic verification. States that simply fail to access or pay for access to electronic data sources, even when cost effective and efficient, may undermine this policy of electronic primacy, and continue a reliance on paper documentation in a way that was not envisioned by either our Medicaid Eligibility proposed rule or section 1413 of the Affordable Care Act and section 1943 of the Act.

Therefore, in this final rule, we are revising § 435.952(c)(2) to clarify that requests for documentation from the individual, whether in hard (paper) copy or in other formats, are to be limited to cases where the State has determined that verification using an electronic data match, (including with another State agency) would not be effective, considering such factors as the administrative costs associated with establishing and using the data match, the administrative costs associated with relying on documentation, and the impact on program integrity and error rates in terms of the potential both for ineligible individuals to be approved, as well as for eligible individuals to be denied coverage. We have also removed the reference to ''paper'' in § 435.945(a), as redesignated in the final rule. These modifications are consistent with the policies we proposed to modernize verification systems and align them with the systems used to verify eligibility for APTC.

Comment: Many commenters recommended that the regulation provide specific protections, such as requiring States to accept self-attestation, for vulnerable populations who may not have documents and for whom the State may not be able to verify information using electronic sources.

Response: Under the regulations, States may accept self-attestation, except for where the law would require a separate set of procedures (such as in the case of citizenship and immigration status) for individuals who do not have documentation and the State cannot verify the individual's information using electronic data sources.

Comment: A number of commenters were concerned about the interaction of these regulations with PERM. The commenters believed that, absent audit and quality control protection being afforded in these regulations, States often would need to verify income using paper documentation. One commenter recommended that States submit a plan to notify the Secretary of the data sources it will use in verifying eligibility, which the commenter believed would help to address State concerns about compliance with PERM.

Response: As noted above, we intend to ensure alignment of PERM and other program integrity rules and procedures with the new eligibility rules. As explained in the State Exchange Implementation Question and Answers published on November 29, 2011, available at *http://www.medicaid.gov/Federal-Policy-Guidance/CIB-11-29-2011.pdf,* under the recently modified PERM rules, as long as federally-approved State procedures are followed, the PERM rules classify the case as an accurate determination. Thus, if a State relies on self-attestation to establish certain facts regarding eligibility consistent with Federal rules, PERM audits also rely on the self-attestations provided. If federally-approved State policies require additional verifications and data collection, auditors will review cases against those standards.

We also are adding a new paragraph § 435.945(j), under which State Medicaid agencies will develop, and update as appropriate, a verification plan describing the agency's verification policies and procedures, including the standards applied by the State in determining the usefulness of the financial information described in § 435.948(a). The verification plans must be available to the Secretary upon request, thereby enabling appropriate oversight of State implementation of the standards established in the regulations and assuring policies adopted by the State will serve as the basis of PERM reviews.

Comment: One commenter questioned if States are expected to maintain electronic information from the data match from trusted third party sources for income verification for some period of time for PERM/MEQC verification of eligibility determination.

Response: Current regulations at § 435.913(a) require the Medicaid agency to include in each applicant's case record facts to support the agency decision on the application, which would include information obtained from a data match.

Comment: Two commenters suggested that accepting self-attestation could result in retroactive liability for States and managed care organizations if, later, some eligibility determinations were found to be erroneous. One commenter recommended that CMS hold States harmless through 2014 for all quality control and audit errors in the event that the annual reconciliation for the APTC conducted by the IRS uncovers inconsistencies about which the State had no way of knowing. Another commenter suggested that if States accept self-attestation, they should be allowed to recover funds if subsequent verification shows the individual was not eligible for Medicaid. One commenter expressed concern that applicants will be approved, without delay, pending receipt of verifications, and if later are determined ineligible, the agency must give them proper notice while receiving coverage at the taxpayer expense.

Response: States are accountable to ensure that eligibility determinations are made accurately and in accordance with State and Federal policies, and their success in doing so is measured in accordance with the MEQC and PERM programs. Under our regulations at § 431.980(d), States are not held liable for eligibility determinations made in accordance with the State's documented policies and procedures, including self-attestation, and supported by information in the case record. This rulemaking does not alter these regulations or establish any new liability for States for FFP claimed on behalf of individuals erroneously determined eligible for Medicaid and enrolled in the program because the State did not take into account information not available to it at the time of the determination. For individuals' rights and responsibilities, under current regulations, once an individual is determined eligible, the agency must provide proper notice and hearing rights prior to termination in accordance with 42 CFR part 431 subpart E. Recovery from individuals erroneously determined eligible is generally not permitted, with the possible exception of fraud on the part of the individual, or in the case listed under § 431.230(b). In the case of potential fraud, the regulations at 42 CFR part 455 subpart A would continue to apply. Regulations at 42 CFR part 431 subpart E and part 455 subpart A are not affected by this rulemaking.

Comment: One commenter indicated that the rules are not clear as to whether the Medicaid agency may make a determination based on self-attested information or whether the self-attested financial information must first be verified through the data matches described in § 435.948 and § 435.949. The commenters requested clarification that a determination may be made based on self-attested information subject to a later request for further information if financial information cannot otherwise be verified. Another commenter suggested that data resources be utilized at initial application to support self-attested statements.

Response: The regulations provide States with the flexibility to decide the usefulness, frequency and time-frame for conducting electronic data matches. Thus, a State may approve eligibility based on self-attested financial information without requesting further information (including documentation from the individual) and follow up with data matching in accordance with § 435.948 after enrollment, or the State can choose to conduct the match prior to finalizing the eligibility determination, subject to timeliness standards established in accordance with § 435.912. Section 435.945(a) permits States to accept self-attestation of most elements of Medicaid eligibility; § 435.945(b) provides that States must request and use information relevant to determining eligibility in accordance with § 435.948 through § 435.956. (See our above response regarding our amendments to clarify that self-attestation will not be permitted when the law would require a separate set of procedures.)

Comment: Another commenter had concerns regarding the level of subjectivity that will be permissible if the applicant is not required to enter any specific income information into an application as a first step in the verification process. The commenter was concerned that the income retrieved from the Federal data services hub or other electronic data sources no longer would be verified against data entered by applicant.

Response: We are working to develop tools for individuals and States to use to determine current MAGI-based income based on the information obtained as part of the application process. We anticipate that the process and sequence by which this occurs could be structured in different ways, including by asking an individual for income information up front and confirming it with electronic sources afterward, or by asking an individual to confirm information that the agency obtains electronically.

Comment: One commenter indicated that the 90-day timeframe for resolving discrepancies conflicts with rules for other public assistance programs, and could have a significant administrative impact on States. One commenter recommended that the rule should specify that Medicaid is to be considered correctly paid and no recovery should be sought during the time period that the Medicaid agency enrolls an applicant for 90 days while awaiting information to resolve an incompatibility through to the effective date of proper notification in instances resulting in a discontinuance of coverage.

Response: There is no 90-day reasonable opportunity period addressed in this regulation. The 90-day reasonable opportunity period related to the APTCs is addressed in the Exchange final rule at 45 CFR 155.315(f).

Comment: A number of commenters suggested that the regulations encourage States to explore alternatives such as self-attestation of income and/or assets for applicants whose eligibility is not based on MAGI methodologies. A few commenters also suggested that the data matching required under § 435.948 apply to applicants being evaluated for eligibility on a basis other than MAGI.

Response: The verification regulations at § 435.940 through § 435.956 apply to the determination of eligibility of all individuals; they are not specific to individuals whose financial eligibility is based on MAGI methodologies.

Comment: A few commenters recommended allowing for acceptance of self-attestation of citizenship and immigration status. One commenter expressed concern that the Medicaid and Exchange regulations were inconsistent with regards to verification of citizenship.

Response: Verification of citizenship and immigration status were not addressed in our Medicaid Eligibility proposed rule. However, we note that such verification is governed by sections 1902(a)(46), 1903(x), and 1137(d) of the Act, which require verification of citizenship and immigration status. Also, under our final rule, where citizenship and immigration status can be verified with the SSA or DHS through the electronic service to be established by the Secretary under § 435.949, the rule requires use of that service.

Comment: One commenter believed that proposed § 435.945(b) implied that paper documentation of citizenship and satisfactory immigration status is always required for Medicaid when, in fact, citizenship may be established based on data matches with SSA or State birth certificate records, without the applicant providing any paper documentation.

Response: Section 435.945(a), as redesignated in this final rule states that self-attestation alone can never be used for citizenship or immigration status, verification of which are governed by sections 1137, 1902(a)(46) and 1903(x) of the Act which require either electronic verification or other documentation (not paper documentation exclusively).

Comment: We received many comments that the regulation should clarify that, while electronic data matching is required at initial application and redeterminations, such data matching is not required on an on-going basis, as this could be burdensome for States. One commenter suggested that State Medicaid agencies only be required to act on changes in household size, State residency and loss or gain of employment that impact eligibility.

Response: The regulations do not change current policy, under which States have flexibility to determine the frequency of data matches between regular eligibility renewals. States are not required to conduct data matches on an ongoing basis. States are subject to all the verification requirements of § 435.952 when responding to changes in an individual's circumstances. Under § 435.916(d), for MAGI-based determinations, when an individual reports a change in circumstance that affects their eligibility, the State must limit its review of third-party data sources to eligibility factors affected by the changed circumstances.

Comment: One commenter recommended that proposed § 435.945(d) be modified to allow the child support enforcement unit more freedom to share information with the Medicaid agency, and that other necessary changes be made to permit the Office of Child Support Enforcement (OCSE) to release information from the National Directory of New Hires to the agency, as intended by the CHIPRA legislation.

Response: While our final regulations allow State Medicaid agencies to rely on additional data from other agencies, as long as the requirements of § 435.945(e) through (i), as redesignated in the final rule, are met, we believe that rules governing release of information by the OCSE are beyond the scope of this rule.

Comment: One commenter questioned whether § 435.945(e) ensures that beneficiaries will not bear the costs of any information matching conducted by the State Medicaid agency.

Response: Section 435.945(e) relates to the financial responsibility of different agencies to bear the cost of data matching requested by them. Beneficiaries cannot be asked to bear any of the costs for data matching; this is an administrative cost.

Comment: One commenter questioned why the States must reimburse another agency for reasonable costs incurred for furnishing information to another agency.

Response: The reimbursement is for costs incurred by the other agencies in providing information to the Medicaid agency, and is required under section 1137 of the Act.

Comment: Many commenters inquired or made specific recommendations about the content and format of the information that must be provided to individuals under proposed § 435.945(f) prior to initiating an electronic request for data. The recommendations included providing written information in plain language, providing an explanation of the alternative data sources (if any) and consequences should the individual choose not to have one of the data sources contacted, and that notices be easily accessible. Another commenter requested clarification about how States are supposed to notify individuals prior to initiating an electronic data match.

Response: The regulation requires that individuals be informed of the ways and circumstance in which the agency may be requesting information, as is the case under current regulations. This information must be provided in a manner that is simple and accessible. States are not required under the regulation to provide the required information to individuals every time the State wants to initiate a data match. A State could, for example, provide the required information at application and regular renewals of eligibility.

Comment: One commenter asked if an individual can decline to have States check IRS data because they know it is inaccurate or want to keep it private and instead provide income verification to the agency.

Response: As part of the application process, under section 1137 of the Act, applicants must provide their SSN and must be advised how the SSN will be used, including obtaining IRS data. Applicants do not have an opportunity to decline that process, but do have an opportunity to present alternative documentation if IRS data do not reflect their current circumstances. Non-applicants are not required to provide an SSN to enable an IRS match, although they may do so voluntarily. Statutory privacy and confidentiality protections apply to the disclosure, use, and maintenance of the IRS data.

Comment: Many commenters were concerned that individuals would not have an opportunity to review and either validate or correct data that is imported into their application.

Response: Under § 435.952(d), States may not deny or terminate eligibility based on information obtained through data matches without providing the individual with an opportunity to validate or dispute such information.

Comment: Many commenters supported the requirement in proposed § 435.945(h) regarding information exchanged between the Medicaid agency and other agencies and programs, but recommended that the regulation specify that information can only be requested, shared or used for purposes strictly relevant to eligibility verifications, and that the use of such information meet existing requirements relating to the confidentiality, disclosure and maintenance of information regardless of the source from which it is received. Another commenter strongly recommended that any confidential or especially sensitive information sought, such as information relating to specific diagnoses, illnesses, treatments or disability, should have protections built in and an exceptions process for the individual to avoid having that information accessed and potentially subject to wider data sharing. Another commenter recommended that the obligation to provide secure interfaces for data-matching be explicitly codified by reference to specific statutes that prohibit requesting unnecessary information, such as the Privacy Act of 1974, throughout these regulations. Many commenters commended the requirement under § 435.945(i) that States establish formal agreements to protect information but recommended that information can only be used for narrow and relevant verification purposes, and meet confidentiality thresholds to earn trust in the system.

Response: Confidentiality of information is essential. Existing regulations at 42 CFR part 431 subpart F protect the confidentiality and safeguarding of applicant, non-applicant and beneficiary information, including medical information, and we have added a cross reference to these regulations in § 435.945(c). Recognizing the specific confidentiality and security requirements that attach to MAGI information obtained from the IRS under section 6103(l)(21) of the IRC, as added by section 1414 of the Affordable Care Act, we have also revised § 431.305(b)(6) to clarify that data from SSA and IRS must be safeguarded according to the requirements of the agency that furnished the data, which includes provisions of section 6103 of

the IRC as applicable. We also update the basis for the regulations at 42 CFR part 431 in § 431.300 (adding a new paragraph (d)) and clarify that the reference to section 6103(l) of the IRC in § 431.300(c)(1), as redesignated in this final rule, is limited to section 6103(l)(7). Finally we updated the cross references in § 431.300(c) and § 431.305(b)(6) to § 435.945 through § 435.956 to reflect all the relevant regulations. We are issuing the revisions to § 431.300(c)(1), § 431.300(d), and § 431.305(b)(6) as an interim final rule and are soliciting comments on these provisions.

Section 435.945(h) requires that information exchanged electronically between programs must be sent and received through a secure electronic interface. In addition, § 435.945(i), as redesignated in the final rule, requires the Medicaid agency and other entities to enter into written agreements which must provide for appropriate safeguards limiting the use and disclosure of information as is required by State and Federal law or regulations, including, as applicable, the requirements under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted on August 21, 1996) (HIPAA), the Privacy Act, and section 1942 of the Act, as well as 42 CFR part 431 subpart F and the Exchange final regulations at 45 CFR 155.260.

Comment: Many commenters recommended that the reporting required by § 435.945(g) for the purposes of determining compliance with regulations and evaluating the effectiveness of the income and eligibility verification system be made publicly available and include a consumer and consumer advocate survey component as to the effectiveness of the verification process. One commenter suggested that the reported information also address whether the income and eligibility verification system results in eligible persons being denied eligibility as a result of gaps, omissions, time lags or other failings or inaccuracies of the queried databases.

Response: We will take the comments under advisement in considering what information can and should be made available to the public.

Comment: One commenter questioned why the regulations require written agreements under proposed § 435.945(i). Instead, they recommended that protections could be built into the regulations. Another commenter questioned if the written agreements between the Medicaid agency and the Exchange will allow both entities to exchange taxpayer information or other information, such as protected health information, for the purposes of administering eligibility for the programs.

Response: Use of written agreements between agencies exchanging information is a commonly accepted way to ensure that required confidentiality and privacy protections are provided, including those set forth in existing regulations in part 431 subpart F. The written agreements between the Medicaid agency and Exchange should allow both entities to share information which is needed to determine eligibility or for other purposes directly related to the administration of the respective programs. Section 1137 of the Act ensures that necessary safeguards are in place for information exchanged among agencies. In addition, 45 CFR 155.260 in the Exchange final rule provides for privacy, information security, and data sharing requirements for Exchanges.

Comment: Many commenters commended the requirement under § 435.948(a) that State agencies must request financial eligibility information from other agencies. However, they expressed concern that by providing States with discretion to not make these requests if the State deems that they are not ''useful,'' the rule creates too broad an exception and places undue burden on individuals. Some recommended that the authority to determine usefulness should remain with the Secretary. Others recommended that States be required to collect information from other agencies ''unless there is no information materially relevant to an eligibility determination'' and that the language ''relating to financial eligibility'' be changed to ''necessary for financial eligibility determinations.'' Still other commenters recommended that the final rule provide stronger parameters or minimum standards for States in determining when to use data sources to process eligibility so that States do not define ''useful'' in such a way that all available databases are not tapped. Some commenters recommended replacing the word ''useful'' in paragraph (a) with ''available, accurate, and timely.'' One other commenter was concerned that many eligible individuals will be denied coverage in real time simply because the databases to be used in verifying wages and other income do not rely on ''point in time'' information, are out-of-date, incomplete, or inaccurate. Other commenters supported the flexibility afforded by the regulations for States to determine what is ''useful.''

Response: We do not believe it is possible or preferable for the Secretary to prescribe all the situations in which financial data sources are useful and believe that States are in the best position to make such a determination. States currently use wage data that lags behind in making eligibility determinations and the data often is sufficient, notwithstanding the time lag, for the State to confirm the information provided by the applicant. The requirements at § 435.952(d) ensure that individuals will not be denied eligibility simply because available wage data may not be up to date, as States must request additional information if necessary before denying or terminating eligibility based upon a data match.

The time lag in the availability of quarterly wage data would not justify a State concluding that such data is not useful to verifying income eligibility and routinely relying instead on documentation provided by the individual. Conversely, a State could determine that accessing quarterly wage data is not useful if income data received from the IRS is reasonably compatible with information provided by the individual. In that situation, the agency would have obtained reliable verification of income.

Comment: One commenter sought confirmation that States may consider the cost effectiveness of a data match in determining its usefulness under § 435.948(a).

Response: We agree that cost-effectiveness is an appropriate consideration in determining the usefulness of electronic data matches under § 435.948(a) of the regulations. States cannot be expected to obtain all possible electronic data, but, at the same time, State agencies should rely on electronic data when it is cost-effective to do so. Under proposed § 435.952(c) documentation from an individual is permitted only when electronic data are not available or information obtained from an electronic data source is not reasonably compatible with information provided by or on behalf of an individual. In the final rule, we are clarifying this provision to provide that, in determining whether electronic data are available, States need to consider the costs of establishing and using the matching capability against the cost of requiring, receiving, and reviewing documentation, as well as the impact on program integrity in terms of the potential for ineligible individuals to be approved, as well as for eligible individuals to be denied coverage.

Comment: One commenter believed that § 435.948 is unduly narrow because it limits data-based verification required of States to financial elements of Medicaid eligibility, rather than

including all other eligibility elements, such as State residence. The commenter believed that this limitation is inconsistent with section 1413(c)(3)(A) of the Affordable Care Act, which requires the use of data matches to establish eligibility to the maximum extent practicable, without any limitation to the financial components of eligibility.

Response: Section 435.948 codifies section 1137 of the Act, which requires specific data matching arrangements in verifying financial eligibility for several Federal means-tested benefit programs, including for purposes of Medicaid. Section 435.956 of our regulations addresses verification of non-financial criteria. Section § 435.952 applies to both financial and non-financial verification, and section (c) of the Medicaid Eligibility proposed rule required that, if self-attestation is not accepted for criteria other than citizenship/immigration status, States must access available electronic data bases prior to requiring additional information (including documentation) in verifying all factors of eligibility.

Comment: A few commenters recommended that States be required to accept income information verified by SNAP to determine Medicaid income eligibility.

Response: Section 435.948(a)(2) requires States to request information related to financial eligibility from SNAP when useful to verifying financial eligibility. The standards set out in these rules establish an appropriate basis for States to assess the usefulness of SNAP, as well as other data in verifying financial eligibility. We note that the reference to the Title IV–A program (TANF) was inadvertently admitted from § 435.945(a)(2) in the Medicaid Eligibility proposed rule so we have added it back in this final rule.

Comment: One commenter proposed that the data sources under § 435.948(a) include the Breast and Cervical Cancer Prevention and Treatment Act (BCCPTA).

Response: The Medicaid agency does not need to conduct an income determination for individuals eligible for Medicaid as a result of being covered under the BCCPTA eligibility group (see section 1902(aa) of the Act). Therefore, this would be an unnecessary addition to § 435.948(a).

Comment: One commenter believed it is confusing to include Public Assistance Reporting Information System (PARIS) in § 435.948(a) in the list of possible data sources. Since States must conduct data matching with PARIS, they have no discretion to determine it is not useful to do so.

Response: PARIS is not necessarily related to income verification. Therefore, we have moved the requirement related to PARIS to a new § 435.945(d).

Comment: One commenter noted that changes that affect eligibility must still be reported within 10 calendar days but there is no electronic database that will provide current income.

Response: We are unsure of what 10-day requirement the commenter is referring to; perhaps this relates to a particular State's rules. Under existing Federal regulations, States need to establish procedures to ensure that beneficiaries make timely and accurate reports of changes that may affect their eligibility; this is retained in § 435.916(c). Under § 435.952, States must evaluate any such information received, consistent with the standards and protections established in that section.

Comment: Many commenters suggested that proposed § 435.948(c) be revised to reflect that the agency ''must'' obtain the information directly from the appropriate agency or program consistent with the requirements in § 435.945 of this subpart when such information is not available through the Federal data services hub described at § 435.949.

Response: Information needed to verify eligibility which is available through the Federal data services hub described in § 435.949 must be obtained through that service. If needed information is not available through that service but can be obtained through an electronic match directly from another agency or program, as is the case with the information described in § 435.948, the State must obtain the information from such agency or program. To avoid any confusion that the proposed regulation may have caused, we have deleted proposed § 435.948(c), as we believe these requirements are already included in other parts of the regulation (that is if information cannot be obtained through the hub, then it would be obtained directly from the agency or program). We also have moved the provisions at proposed § 435.948(d) and proposed § 435.949(c) to a new § 435.945(k) in the final rule, which allows, subject to Secretarial approval, States to adopt alternative data sources to those listed in § 435.948(a), or to obtain needed information through a mechanism other than the Federal data services hub described in § 435.949(a), to ensure that the goals of maximizing administrative accuracy and efficiency, minimizing consumer burden, meeting confidentiality requirements, and promoting coordination.

Comment: We received a number of comments related to the provision of an SSN by non-applicant household members. One commenter believed it would be difficult to verify the dependent status of a child without the parent's SSN. A few commenters were also concerned that if non-applicant SSNs may not be required it will be difficult to verify income and suggested that proof of income by non-applicants be required. Others were concerned about undue burden on applicants if non-applicant household members do not provide an SSN.

Response: We are codifying this current policy at § 435.907(e) and as discussed in section III.E. of the preamble, States are prohibited from requiring non-applicants' SSNs as a condition of another household member's eligibility for Medicaid or CHIP. In the case of non-applicant household members, such as a parent, who do not provide an SSN and whose income is material to the eligibility determination of the applicant, States are directed in § 435.948(c) to use other personally identifying information in conducting data matches if it is possible to do so. In order for the IRS to return income information relating to any individual, including a non-applicant, the individual's SSN is required. If data matches are not possible, States may accept self-attestation or request additional information to verify income or tax dependency status, consistent with the regulations. The IRS will not return information which can be used to verify the dependent status of a child.

Comment: One commenter questioned how discrepancies will be resolved when an SSN cannot be validated through a data match or is validated as someone else's SSN.

Response: The requirement to validate an applicant's SSN with the SSA is not new and is currently codified at § 435.910(g), though States must utilize the Federal data services hub described in § 435.949 for this purpose if the information is available through such service. The Affordable Care Act did not change the process for resolving inconsistencies. Individuals may also continue to contact SSA to resolve any discrepancies with their SSN that could not be resolved by the State Medicaid agency.

Comment: Many commenters recommended that we provide in the regulation text a reference to § 435.910, which requires States to assist individuals in obtaining an SSN. One commenter suggested that the requirement to furnish an SSN only apply to those who are eligible for an SSN, and that the State not be required

to assist individuals who are not eligible for SSNs because the requirement to apply for an SSN creates an administrative burden. Many commenters believed States should be required to assist lawfully-residing individuals not eligible for a regular SSN with obtaining a ''non-work'' SSN.

Response: Under existing regulations at § 435.910, individuals seeking coverage are required, as a condition of eligibility, to furnish an SSN, unless the individual has a well-established religious objection to obtaining an SSN. States have long had the responsibility under § 435.910(e) to assist individuals who do not have an SSN with obtaining one, and may not deny or delay benefits pending the issuance of such a number. To clarify, we have revised the cross-reference to § 435.910 in § 435.956(d) to clarify that States not only must verify SSNs in accordance with § 435.910(f) and (g), but are subject to all the requirements in § 435.910.

The requirement to furnish and verify an SSN only applies to individuals eligible for an SSN, and note that individuals not eligible for an SSN cannot be denied eligibility on that basis, and have revised § 435.910 accordingly in the final rule, but still must meet the requirements related to citizenship. States have long been permitted to provide an exception to the SSN requirement for individuals with a well-established religious objection to obtaining an SSN. While SSA will issue an SSN for a non-work reason, in accordance with 20 CFR 422.104, to individuals not otherwise eligible for a ''work-related'' or ''regular'' SSN, the purpose of requiring an SSN is to facilitate verification of income, citizenship and other eligibility criteria. Since an SSN issued for a non-work reason cannot be used to obtain data from other programs or agencies needed to verify eligibility for Medicaid, there is no practical purposes to requiring that individuals eligible only for a non-work SSN obtain such an SSN, or that State Medicaid agencies assist the individual in doing so. Therefore, based on our understanding of current practice in many States, we are codifying in this final rule that the exception to furnishing an SSN set forth in paragraph (h) of § 435.910 applies also in the case of individuals who are not eligible to receive any SSN as well as to individuals who do not have an SSN and are only eligible to receive an SSN issued for a non-work reason. We have also revised the language in paragraph (h) to clarify that the exceptions in paragraph (h) mean, not only that the agency may issue a different identification number to someone excepted from the requirement to provide an SSN, but also that individuals described in paragraph (h) are excepted from the requirement to furnish an SSN as a condition of eligibility, as otherwise required in § 435.910(a). (The current regulation at § 435.910(h) only references the permissibility of the agency to issue a different identification number for the individuals described.) Conforming revisions are made to the general requirement to furnish an SSN in § 435.910(a). In addition, we have made small modifications to § 435.910(f) and (g) to clarify that such an individual would not need an SSN verified and that the general rule that a State should not delay or deny an otherwise eligible individual for Medicaid, would also apply to an individual who is not eligible for an SSN or who does not have an SSN and may only be issued an SSN for a valid non-work reason. We have also clarified in § 435.910(g) that a State is only required to verify the SSN of those who must furnish one. We are not changing or limiting the responsibility of States to assist individuals seeking coverage in applying for an SSN that can be used for work. Nor does this change affect the requirement that citizenship and immigration status be verified.

Comment: A few commenters recommended that the regulation explain how alternative sources under proposed § 435.948(d) would be used. A number of commenters also indicated that it is unclear whether agencies would be approved to use alternative data sources under § 435.948(d) for all applicants, on a case-by-case basis, or only when other data sources do not yield useable results. Some recommended that the regulation explicitly allow the agency to contact the individual's employer to obtain financial information when such information is not available through the Federal data services hub or through the sources mentioned in § 435.948(a). Others also recommended that proposed § 435.948(d) include and cross-reference proposed § 435.945(f), which requires individuals be notified of the information States will request from other agencies and how it will be used.

Many commenters recommended that the regulation at proposed § 435.949(c) clarify that States should not be able to use an alternative process to verify information available through the hub if doing so would be more burdensome for individuals. Other commenters believed that States should be able to use alternative processes or sources as long as the information is as accurate and timely as, or can be obtained more efficiently than, that provided through the Federal data services hub described in § 435.949. One commenter recommended that the process for obtaining Secretary approval to use alternative data sources required under § 435.948(d) be streamlined and efficient.

Response: As mentioned above, we have moved the proposed regulations at § 435.948(d) and § 435.949(c) to a new § 435.945(k). States may utilize alternative sources in lieu of those listed in § 435.948(a) or an alternative mechanism other than the Federal data services hub described in § 435.949(a) if such alternative source or mechanism will reduce the administrative costs and burdens on individuals and States while maximizing accuracy, minimizing delay, meeting applicable requirements relating to the confidentiality, disclosure, maintenance, and use of information, and promoting coordination with other insurance affordability programs.

States may seek approval to use such alternative sources either across-the-board or in specific circumstances. Under § 435.945(j), States would describe the circumstances for using alternative sources or mechanisms in their verification plans. States are not required to seek approval from the Secretary to access data sources in addition to those identified in § 435.948. The notice required under § 435.945(f) of this final rule applies to the entire subpart—that is, to all data matching conducted by the agency. We do not believe it is necessary to include a specific cross-reference to § 435.945(f) in § 435.945(k).

Comment: One commenter suggested that, given the uncertainty regarding the information that will be available to States through the Federal data services hub and States' experience using alternative data sources, we should not issue further regulations, but should permit States maximum flexibility in utilizing data sources of their choice. One commenter believed that States should be permitted to continue to use existing electronic interfaces with SSA and DHS that provide the necessary data matches and should not be required to use the Federal data services hub.

Response: We are establishing a federally-managed data services hub to support information exchanges between States (Exchanges, Medicaid and CHIP agencies) and relevant Federal agencies. In many cases, Federal agencies other than CMS will be providing information through the hub. Additional information about the services available through the hub and the terms for accessing those services is under development. Under

the regulations, if verification of particular information is not available through the Federal data services hub, States may continue to utilize existing electronic interfaces. We have revised the regulation text to clarify that, should the data services hub establish a secure interface with other Federal, State or other data bases, States would then use such interface to access such additional data sources when needed. We will provide additional guidance should such additional electronic interfaces be established.

Comment: A few commenters asked whether the mandated use of the Federal data services hub established by the Secretary will be provided free of charge to the States. One commenter indicated that the development of the electronic transfer by the States could be very costly so CMS should provide reimbursement or a cost-effective mechanism to States. Two commenters questioned how the Federal data services hub will affect existing State agreements to access information from SSA or from DHS through SAVE.

Response: While the agency is considering the treatment of charges for fiscal year 2014, we do not anticipate charging Exchanges or State Medicaid or CHIP programs for the use of the hub. Section 435.949(a) clearly delineates the agencies (IRS, SSA and DHS) with which States will obtain certain electronic information through the Federal data services hub, under section 1413(c) of the Affordable Care Act.

Comment: Many commenters asked us to clarify whether the Federal data services hub would provide all the necessary income and household composition information for States to determine an applicant's MAGI. One questioned whether IRS data can be used to verify residency. One commenter also requested further guidance regarding IRS security requirements, and whether these may limit States' access to and utilization of the data.

Response: As explained in the State Exchange Implementation Questions and Answers issued November 29, 2011, available at *http://www.medicaid.gov/Federal-Policy-Guidance/CIB–11–29–2011.pdf,* the IRS will provide the MAGI of parents or other head of household and for certain dependents who had enough income to have been required to file a tax return. This information will be taken from the most recent return (within the 2 previous years) on file. The IRS will also provide information about the size of the household shown on the returns and coding to help the State understand the information being provided and instances in which information may not be available. The IRS will not return information which can be used to verify the dependent status of a child.

In the Medicaid Eligibility proposed rule, we proposed to codify widespread State practice of accepting attestation of household composition, to promote coordination of eligibility rules and procedures with the Exchange. Due to the uncertainty flagged by the commenters, which may sometimes exist regarding the tax filing and tax dependency status of individuals for the tax year in which Medicaid is sought, we are removing the requirement that States must accept self-attestation of household size. Instead, verification of household size is now contained in § 435.956(f) with age and date of birth. An individual's address is not among the information which will be provided by the IRS. Return information, as such term is defined by section 6103(b)(2) of the IRC, is kept confidential under section 6103 of the IRC. The disclosure, use, and maintenance of return information is strictly governed by section 6103.

Comment: One commenter believed that States should not be required to continue reconciling PARIS matches because this process currently must be done manually and is burdensome for States and PARIS does not return information about whether Medicaid eligibility is correctly established in other States.

Response: Data matches with PARIS are required as a condition of FFP under section 1903(r) of the Act.

Comment: One commenter interpreted § 435.952(a) to mean that eligibility must be determined promptly using electronic verifications identified under sections § 435.940 through § 435.960 and that § 435.945 of the proposed regulation appears to allow self-attestation for identity, whereas, § 435.407(e) of the current regulations requires verification of identity other than by self-attestation. One commenter questioned whether the use of electronic data matches removes the requirement for applicants to verify identity.

Response: Section 435.407 pertains to verification of identity when it is a component of verifying citizenship. Reliance on self-attestation of citizenship is not permitted under § 435.945(a), as redesignated in the final rule, or the underlying statutory provision at section 1902(a)(46)(B) of the Act. States will be required to verify citizenship in the first instance through the Federal data services hub under § 435.949. To the extent that such verification fails, States would employ the verification processes established under sections 1902(ee) or 1903(x) of the Act and § 435.407 of the regulations. Changes to these statutory and regulatory provisions enacted in CHIPRA will be addressed in subsequent rulemaking.

Comment: Many commenters expressed concern with the deletion of the requirement in § 435.952 for States to request verification within 45 days of when new information is received. Commenters are concerned that without timeliness standards, access to coverage could be delayed and there will be no accountability for States. Some commenters asked what it means to ''promptly evaluate information received'' in the context of real-time eligibility determinations. A few commenters recommended that the States be required to complete verifications as quickly as possible, not to exceed 30 days. One commenter questioned whether deletion of the 45-day requirement would preclude States from setting their own timeliness requirements, and whether States will be able to set different time standards for different populations or circumstances. One commenter requested that CMS define parameters within which States would have flexibility to establish policies and procedures for real-time eligibility determinations.

Response: First, we note that 45 and 90 days relating to timely eligibility determinations at redesignated § 435.912 remains, and that additional parameters relating to the timely determination of eligibility are included in the final rule (see discussion in section III.D. of the preamble). However, we removed the 45-day standard to request verification and determine whether the information affects eligibility from § 435.952 because we expect the verification process to occur faster, often in real time where electronic verification is available. Beyond the timeliness standards which States establish in accordance with § 435.912, we are not providing additional specific timeliness standards in these regulations for the verification of new information received by States under § 435.952, but will consider, with input from States and stakeholders, such standards in developing broader performance metrics relative to State eligibility and enrollment systems.

Comment: One commenter questioned how Medicaid requirements regarding third party liability can be operationalized in the context of ''real time'' eligibility and enrollment determinations.

Response: Third party liability is primarily governed by sections

1902(a)(25) and 1912 of the Act, and 42 CFR part 433 subpart D and § 435.610 of the regulations. The Affordable Care Act did not alter these provisions, which will remain in effect in 2014. Based on State experience today, compliance with third party liability rules, which can be handled following a determination of eligibility, should not impede prompt processing of applications.

Comment: Many commenters including States, as well as consumer advocates, supported the concept of reasonable compatibility in § 435.952(b) but recommended that CMS further define how this concept should be applied. Some commenters were concerned that the language in the Medicaid Eligibility proposed rule was too broad, and that States could interpret it in an overly restrictive way. Many of these commenters recommended that when the information provided by or on behalf of the individual is different from that obtained through electronic sources, but does not affect the eligibility, the information should be considered reasonably compatible. One commenter emphasized the need to interpret the reasonable compatibility standard consistently across States and insurance affordability programs to facilitate administrative simplicity and ensure comparable treatment of applicants regardless of where they submit their application.

Response: To maintain State flexibility while providing greater consistency, we have revised § 435.952(c) to provide that household income information obtained through an electronic data match is reasonably compatible with income information provided by or on behalf of an individual if both are above or both are at or below the applicable income standard or other relevant income threshold. As discussed above, we also are adding a new paragraph § 435.945(j), under which Medicaid agencies will set forth their policies in verification plans which will include the circumstances in which information obtained through an electronic data match is considered by the State to be reasonably compatible with information provided by or on behalf of an applicant or beneficiary, or obtained through another source. We will be working with States to develop a template for such plans.

Comment: A few commenters recommended that States should not be permitted to ask individuals for additional information if the State's data match that triggered the apparent incompatibility is more than 90 days old.

Response: Data that is more than 90 days old (such as IRS data) may be relied upon to verify eligibility criteria if reasonably compatible with an individual's attestation. Where such data is not reasonably compatible, the regulations do not require States to accept the attested information. Instead, States may accept a reasonable explanation provided by the individual explaining the discrepancy (for example, that there has been a change in circumstances) or, where other electronic data is not available under the standard set forth at § 435.952(c)(2)(ii), the State may request additional information from the individual.

Comment: A number of commenters urged that otherwise eligible individuals be provided benefits during a ''reasonable opportunity period'' in which the agency works with the individual to resolve any discrepancies when information obtained through electronic data matching is not reasonably compatible with that provided on the application. Some suggested that the ''reasonable period'' referenced in § 435.952 be 90 days to be consistent with the Exchange; one commenter recommended 30 days. A number of commenters indicated the Medicaid and Exchange verification rules should be identical in allowing for a good-faith extension.

Response: Section 1411(e)(3) and (4) of the Affordable Care Act requires that to the extent there is an inconsistency between the data obtained by the Exchange and applicant information, the Exchange provide an applicant with a ''reasonable opportunity period'' of 90 days during which he or she may present documentation to resolve such inconsistency, and provide the applicant with advance payments of the premium tax credit and cost-sharing reductions to which he or she has attested.

However, for purposes of Medicaid eligibility, this ''reasonable opportunity period'' does not apply to all eligibility criteria.

The reasonable period referenced in our proposed § 435.952 does not require the provision of benefits pending receipt of additional information requested by the agency from the individual nor does it specify a 90-day period. We do not believe it is necessary for inter-program coordination to align the length of this period with the 90-day ''reasonable opportunity'' provided in the Exchange regulations at 45 CFR 155.315(f), and therefore, are retaining the discretion afforded States to determine the length of this period.

Comment: A few commenters recommended that when attestation is not possible, Medicaid agencies need to accept different types of documentation, such as letters from employers, or applicant-approved telephone contact with a reliable third party, and applicants must be able to submit documentation online, by phone, mail or fax, in person, or other electronic means such as sending photographs of documents from a smart phone.

Response: In accordance with section 1943 of the Act, section 1413 of the Affordable Care Act, and sections 1902(a)(4) and 1902(a)(19) of the Act, individuals must be able to submit documents needed for verification purposes in the same manner as the application. We have revised § 435.907(a) accordingly.

Comment: One commenter believed that proposed § 435.952(d) means that the States cannot use the electronic verification sources as true verification if it results in eligibility because this section states that an agency may not deny or terminate eligibility based on an electronic verification source unless the agency has requested additional information from the individual and provided proper notice.

Response: Section § 435.952(d) cites all the verification regulations, not just the ones requiring matches with electronic data sources. This section provides that States may not deny or terminate an individual's eligibility based on the information obtained through the verification process unless and until the State has provided an opportunity for the individual to provide additional information, and proper notice and hearing rights to the individual in accordance with part 431. It does not preclude States from approving eligibility based on electronic data sources.

Comment: Many commenters recommended that the word ''delay'' be added to § 435.952(d), so that this paragraph would provide, ''The agency may not deny, reduce, *delay* or terminate eligibility * * * for any individual on the basis of information received * * * unless the agency has sought additional information from the individual * * * and provided proper notice and hearing rights * * *'' The commenters believed this is particularly important given the proposed change to the 45-day eligibility determination timeline and to allow States very broad flexibility in the verification process.

Response: We have provided additional guidance at redesignated § 435.912 regarding the timeliness standards which States are required to establish. We note also that current

regulations at § 435.911(e), redesignated at paragraph (g) of § 435.912 in this final rule, already provide that any time standards adopted by the State agency may not be used as a waiting period to delay eligibility. Therefore, we do not think it is necessary to add ''delay'' to the § 435.952(d).

Comment: Many commenters recommended maintaining language from the deleted § 435.955(f)—that ''the agency must certify to the Federal agency that it will not take adverse action against an individual until the information has been independently verified and until 10 days (or sooner if permitted by § 431.213 or § 431.214) after the individual has been notified of the findings and given an opportunity to contest.''

Response: The language cited by the commenters is maintained in § 435.952(d), which provides that the agency may not deny or terminate eligibility or reduce benefits for any individual unless it has sought information from the individual, and provided proper notice and hearing rights in accordance with subpart E of part 431 of the regulations. Section § 431.211 of that subpart contains the protection at issue in the comment.

Comment: A few commenters recommended that when applicants or beneficiaries fail to respond to a request for information in accordance with § 435.952(d), they should be suspended rather than terminated from eligibility.

Response: The appropriate process is outlined in this provision and also through the notice and hearing provisions in 42 CFR part 431 subpart E. We do not believe it is appropriate to require States to suspend rather than terminate Medicaid eligibility once timely and appropriate notice has been provided. If a beneficiary seeks a timely hearing, benefits are continued in accordance with § 431.230.

Comment: Many commenters supported the prohibition on State agencies from relying on immigration status to determine lack of State residency. To avoid confusion many commenters further recommended that we delete the word ''alone'' from § 435.956(c)(2).

Response: We have struck the word ''alone'' from § 435.956(c)(2) of this final rule. We also clarify that this provision applies generally to evidence of immigration status, removing the reference to ''a document,'' as a State may obtain such information from an electronic data match or other source. We have also revised the language to clarify that, although a State cannot use such evidence to determine someone is not a State resident, nothing in these regulations prevents an individual from being able to present evidence of immigration status to prove their State residency, for example, by providing an immigration document that indicates their address. States may request additional information in accordance with § 435.952 to verify residency if an immigration document gives a State reason to question an individual's residency.

Comment: Some commenters expressed concern that § 435.956(c) allows parents in a shared custody situation to attest to where a child resides. The commenters were concerned that parents who live in different States both could attest to the child residing in their State, potentially resulting in Medicaid eligibility being approved in two States.

Response: Self-attestation of residency is permitted today and is currently utilized in many States, even in shared custody situations. States may enter into interstate agreements and access data sources, such as PARIS. Further as, permitted under the regulations, States may seek further information if the State has information indicating potential residency in another State.

Comment: Many commenters supported self-attestation for pregnancy; however, one commenter suggested that for States that provide full Medicaid benefits to this population, verification of pregnancy should be an option. One commenter disagreed with allowing self-attestation for pregnancy.

Response: To promote a streamlined system, we maintain self-attestation of pregnancy as a requirement for States regardless of the benefit package provided by the State; however under § 435.956(e) if a State has information that is not reasonably compatible with the attestation, the State may verify pregnancy in a manner consistent with § 435.952. States have flexibility whether to accept self-attestation of multiple births which relates to household size, verification of which is codified at § 435.956(f) of this final rule.

Comment: One commenter noted that the proposed Exchange regulation requires the Exchange to verify through electronic data sources that an applicant is not incarcerated, but the Medicaid rule is silent on this topic. The commenter urged that self-attestation of incarceration of a family member be sufficient so that children will not be subject to delays in coverage due to a parent's incarceration.

Response: Incarceration is not a factor of eligibility which needs to be verified for purposes of determining eligibility, and therefore, is not addressed in the verification rules. However, as discussed below, payment for medical services provided to individuals during incarceration is generally prohibited under subparagraph (A) of the matter following section 1905(a)(29) of the Act.

I. Periodic Renewal of Medicaid Eligibility (§ 435.916)

In the Medicaid Eligibility proposed rule, we proposed to amend the provision entitled ''Periodic Redetermination of Medicaid Eligibility'' to establish simplified, data-driven renewal policies and procedures for individuals whose eligibility is based on MAGI, consistent with assuring program integrity. In this final rule, we have altered the title of this section by replacing the word ''redetermination'' with the word ''renewal'' and making corresponding language edits in the regulation text. The use of the word renewal rather than redetermination is consistent with the usage in many States. We also received the following comments concerning the proposed periodic renewal of Medicaid eligibility provisions.

Comment: Many commenters supported the requirement for an annual redetermination no more often than once every 12 months. One commenter wrote that States should have discretion to decide how often to evaluate newly eligible individuals. Some commenters suggested that we be more explicit by adding the word ''only'' to § 435.916(a)(1).

Response: As explained in the preamble of the Medicaid Eligibility proposed rule, scheduling regular renewals no more often than once every 12 months for beneficiaries whose eligibility is based on MAGI is consistent with current practice for parents and children in most States and aligns with the annual renewal process for individuals who are eligible for APTCs through the Exchange. We have revised § 435.916(a) to clarify that the renewal policy described in that paragraph applies to all Medicaid beneficiaries whose eligibility is based on MAGI methods, rather than just those beneficiaries described in § 435.911(c)(1) who are eligible on the basis of the applicable MAGI standard.

In response to comments, we have revised the regulation text at § 435.916(a)(1) to clarify that eligibility must be renewed once every 12 months, and no more frequently than once every 12 months under that paragraph. We chose this wording to clarify that renewals do need to occur on an annual basis. We note that as provided in § 435.916(d), eligibility should be renewed more frequently if a beneficiary reports a change in circumstance that

may affect eligibility, or if the agency receives information that suggests the need to review eligibility.

Comment: Many commenters supported the proposed annual renewal process in § 435.916(a)(2), which requires Medicaid agencies to use electronic data to renew eligibility if sufficient information is available. Some commenters expressed concerns about the reliability of the data sources available to the State for this purpose. Others expressed concern that if renewals are performed on the basis of data-matching without requiring a response from the individual, the State is more likely to be liable for inappropriate costs or experience poor results on quality control measures and audits. Two commenters wrote that, for all beneficiaries, State Medicaid agencies should pre-populate renewal forms and ask for response annually, to match up with the process proposed for the Exchange. Some commenters requested that the Medicaid Eligibility proposed rule clarify the interaction of the renewal process with program integrity measures such as PERM.

Response: Proposed § 435.916(a)(2) sought to codify a longstanding policy, explained in a letter to State Medicaid Directors on April 7, 2000, available at *http://www.cms.gov/smdl/downloads/smd040700.pdf,* that States must rely on information that is available and that the State considers to be accurate to renew eligibility. However, if available information suggests that a beneficiary is no longer eligible, if information is subject to change is missing, or if the State has information that suggests that available information is inaccurate, then a State must seek information from the individual before renewing eligibility. For example, if a family has recently verified income, household size, and residency as part of a recent SNAP review, then the Medicaid agency would typically use that information to renew Medicaid eligibility. However, if the SNAP review indicates a different household size, or income information is not available from SNAP or another human service program, State wage reporting or IRS data the State would follow the process in § 435.916(a)(3) to request needed information from the individual. As stated in the Medicaid Eligibility proposed rule, a State's decision on whether to conduct a renewal without requesting further information from the individual may depend on the State's verification policy on certain eligibility criteria, such as residency. States that follow procedures outlined in the regulations will not be cited for a PERM error for lack of further documentation. As discussed in section III.H. of the preamble, PERM regulations issued in 2010 provide that PERM will measure errors relative to the State's own policies and procedures as long as those policies and procedures are consistent with Federal policy and regulations. As also noted, we will continue to review and analyze all of our error rate measurement programs to ensure consistency between these programs and regulations covering eligibility and enrollment.

Comment: Many commenters supported the proposal at § 435.916(a)(3) that, in cases where sufficient electronic information is unavailable, States must send a renewal notice that is pre-populated with any information already known to the agency and require Medicaid beneficiaries to respond with information that is missing or incorrect. Some commenters requested State flexibility on the timelines and procedures for sending a pre-populated form, as well as flexibility on what that form may include. One commenter inquired whether States may require individuals to provide information regarding third party liability at renewal.

Response: We have added language to § 435.916(a)(3)(i)(A) to clarify that the pre-populated renewal forms may only request additional information needed to renew eligibility. Information and documentation of eligibility criteria subject to change need not be requested if it can be obtained from a reliable data source available to the State. For example, a State would not request additional income information from the beneficiary if income information at the initial determination was verified fully by a quarterly wage report, and the quarterly wage report for the most recent quarter remains reasonably compatible with income at the initial determination. Nothing related to assignment of rights and third party liability is altered by the Affordable Care Act nor by these regulations. Today, many States use contractors to determine information regarding third party liability and such an approach may facilitate a State's ability to limit the information asked of beneficiaries at renewal. We will be providing additional guidance.

Comment: Many commenters supported our proposal that beneficiaries have the option to respond to renewals via any of the submission modes used at initial application. Some commenters requested clarification on when a signature is required and the submission modes that can be used. Some commenters requested additional flexibility for States to require signatures from all applicants at renewal.

Response: We are retaining the proposed policy that if the agency has data available that are sufficient to continue eligibility, then no signature may be required. If available data is not sufficient to continue eligibility, then the beneficiary must sign and return a form with missing or corrected information. The individual must be able to submit and sign the renewal form via the same modes available at application-that is, through the internet Web site, mail, telephone, in person, or other electronic means as described in § 435.907(a).

Comment: Some commenters suggested that specific information be included in notices sent to beneficiaries in advance of a renewal. Several commenters advised that an eligibility worker's name and a telephone number to call for information or questions should be required on the notice. One commenter wrote that if an individual is determined ineligible for Medicaid at renewal, the individual should be notified of his or her eligibility for other insurance affordability programs. Some commenters recommended specifically that agencies should request health status updates on renewal forms to screen for non-MAGI categories at renewal, while another commenter requested that no protected health information be contained in a pre-populated renewal form. One commenter also inquired about the effect on the appeals process of using the data-driven renewal system.

Response: We will take these suggestions into account in future guidance we are developing on notices and appeals. We have added § 435.916(e) to clarify that the agency may not request information at renewal which is not necessary to redetermine eligibility. We have added a new paragraph to § 435.916(f)(1), to clarify that, in accordance with longstanding policy the agency must consider all bases of eligibility when conducting a renewal of eligibility. To meet this requirement, renewal forms will need to include basic screening questions, similar to those that will need to be on the single streamlined application, to indicate potential eligibility based on disability or other basis other than the applicable MAGI standard. We note that the addition of paragraph (f)(1) to § 435.916 is consistent with the application in the final rule of the MAGI screen regulations at § 435.911 to the eligibility renewal process, discussed in section III.E of the preamble.

Comment: We received comments that there should be a specified

reconsideration period following a termination of Medicaid eligibility at renewal. Most commenters supported the codification of the 90-day reconsideration period suggested in the preamble to the Medicaid Eligibility proposed rule. Some commenters requested a 120-day reconsideration period, while other commenters suggested making the definition of a time period a State option. One commenter questioned whether a reconsideration period would be required even when discontinuance was for ''good cause.''

Response: We have altered the proposed § 435.916(a)(3)(iii) to provide a minimum of 90 days as a period when the State would reconsider eligibility without a new application and renew eligibility if necessary information is provided. States may adopt a longer reconsideration period if desired. Reconsideration periods are only required for beneficiaries who did not return the pre-populated renewal form as described in § 435.916(a)(3) or the required documentation and are terminated on that basis. At State option, agencies may adopt reconsideration periods for other types of terminations as well.

Comment: Some commenters asked questions about termination and retroactive eligibility during the reconsideration period. One commenter suggested that eligibility be suspended, rather than terminated, during a reconsideration period.

Response: During a reconsideration period, an individual may not be required to submit a full new application to be determined eligible for benefits, which avoids unnecessary application processing for the individual, as well as the agency. During the 90-day period (or a longer period at State option), the individual only needs to supply the information requested in the pre-populated renewal form (including missing documentation, if any), and may do so by mail, phone, in person, or through electronic means. The renewal form in this case serves as an application, and an individual who regains coverage during a reconsideration period is entitled to retroactive coverage under § 435.915 (redesignated from § 435.914 prior to issuance of this final rule) to the same extent and in the same way as if a new application had been filed. With a 90 day reconsideration period, we would expect that in most cases, retroactive coverage will extend back to the date of the termination. States have flexibility in how they design their eligibility systems to implement this provision for the suspension versus termination of eligibility during the reconsideration period.

Comment: Some commenters recommended that the final rule clarify that States continue to be subject to the current requirement that Medicaid agencies are required to screen any individual who loses Medicaid coverage for eligibility under any other Medicaid eligibility categories. Some commenters suggested that for individuals transitioning out of MAGI eligibility, the State should be required to continue Medicaid coverage during the pendency of a Medicaid application for non-MAGI Medicaid coverage. Several commenters asked questions about transfers to other programs when Medicaid eligibility is terminated, and suggested that Medicaid coverage continue until enrollment in another program can be implemented.

Response: In response to these comments, we are finalizing § 435.916(f) to codify our longstanding policy that beneficiaries must be considered for all Medicaid categories prior to termination. This addition also conforms to the policy for executing appropriate eligibility determinations as established at § 435.911. For example, when an individual loses eligibility under a MAGI-based Medicaid eligibility group due to an increase in income, the individual must not be terminated from Medicaid before it is determined whether the individual is eligible under another eligibility group. If it is determined that the individual is not eligible under other Medicaid categories and Medicaid eligibility is terminated, then § 435.916(f) provides that the agency must assess potential eligibility for other insurance affordability programs and transmit data pertaining to potentially eligible individuals to the appropriate program. As noted above, the renewal form will need to contain basic screening questions to enable such assessment.

The rules regarding transfers of beneficiaries' electronic accounts to other insurance affordability programs are at § 435.1200. As described in regulations at 45 CFR 155.420(b)(2)(ii), the Exchange must ensure coverage on the first day of the next month for qualified individuals who have selected a QHP. Medicaid agencies are allowed to extend Medicaid coverage to the end of the month in which notice of termination is given and note that State agencies can receive FFP to do so. States have broad flexibility to design their process for renewals and terminations in ways that promote seamless coverage among eligible individuals.

Comment: Some commenters noted that some populations, such as people who are homeless may need an extended deadline to return the forms. Another commenter noted that some beneficiaries may need agencies to send their renewal forms to authorized representatives.

Response: Section 435.916(a)(3)(i) provides that beneficiaries must be provided a minimum of 30 days to return the pre-populated renewal form. States have the authority to increase that time period for all beneficiaries or for particular populations and to design other strategies to assure ongoing coverage of eligible individuals. As noted in Section III. E of the preamble, applicants may designate an authorized representative who may act on behalf of the applicant including through receipt and submission of renewal forms.

Comment: Though the Medicaid Eligibility proposed rule did not make substantial changes to existing provisions regarding change reporting and agency action on available data between annual renewals, we received many comments on whether such reporting and action should be limited. Many commenters suggested that Medicaid beneficiaries should continue to be required to report all changes to household size and residency, but that Medicaid beneficiaries should not need to report all income changes. Some suggested that the State should notify the beneficiary that he or she only needs to report income changes that cause household income to exceed a threshold in the form of a dollar amount specified by the agency. One commenter suggested that reports should not be required until income changes substantially. Another commenter recommended that if the State's initial income determination was based on an annual income prediction, then it should not be necessary to report actual changes that have already been accounted for at the time of the initial eligibility determination.

Response: We believe we have struck the appropriate balance in § 435.916(c), which provides that beneficiaries must report changes that affect their eligibility. It would be reasonable for States to identify a dollar threshold or other general rule as a way to help families know when to report material changes in income. However, the agency may not discourage reporting of a change in income that could affect a beneficiary's eligibility, benefits, or cost-sharing. In addition, States should not remove all change reporting requirements, except with respect to circumstances that cannot affect eligibility, such as income changes for children in States which have adopted continuous eligibility for children. We note that some changes, such as a

change in address, or addition of a family member, are critical to ensuring that the family remains eligible and is able to access services. To be consistent with the new 12-month renewal policy, in between regular renewals, States must limit any review triggered by a change in circumstance to the eligibility factor(s) affected by the changed circumstances, and additional factors for which information is readily available. The agency must wait until the next regularly scheduled renewal to request information from beneficiaries regarding eligibility factors not related to the change in circumstance, as provided in § 435.916(d)(1) of this final rule. For example, if a parent reports new earnings 3 months after the family's most recent renewal, the State must assess whether the individuals in the family continue to be eligible for Medicaid in light of the new earnings. It must wait until the next regularly scheduled renewal to review other factors of eligibility if it does not have sufficient information available to it to review those other factors. However, if the agency does have enough information to adjudicate all factors of eligibility at the time when the change in circumstances is reported without seeking more information from the family, the State may conduct a full renewal and, if the individuals in the family remain eligible, schedule the next regular renewal to occur 12 months later.

Comment: Some commenters expressed concern about the requirement at proposed § 435.916(d)(2) that agencies act on information they have received when it indicates a change to eligibility or anticipated changes to eligibility. We received many comments requesting limits on data matching, or elimination of the requirements at § 435.916(d). Some commenters requested that the rule specify that data must be used when available, timely, and accurate. Other commenters wrote that if a State conducts data matching in addition to the 12-month renewal, it must be required to use the same third-party sources to verify income as it uses as part of the annual renewal process.

Response: Section 435.916(d) requires the agency to act on information that becomes available that may affect eligibility, in accordance with regulations at § 435.952. States must have flexibility to determine whether it is useful to obtain electronic data as described in § 435.948 between regularly-scheduled renewals, and whether some sources of data are useful at different times, although States should check data sources both at and between scheduled renewals when there is an indication of fraud.

Comment: Some commenters suggested a continuous eligibility model wherein changes may be reported but not acted upon. A few commenters believed that there was authority to do so because section 1137 of the Act does not specify the frequency of the use of data from the sources identified in the statute. The commenters also believed the Secretary has rulemaking authority under section 1102 of the Act to authorize a State plan option for continuous eligibility for adults. One commenter referenced SNAP rules, which provide that the State may choose not to act on a change that reduces benefits, but must act on a change that increases benefits. Another commenter requested clarification on whether or not States are required to use point-in time income verifications for annual renewals.

Response: Continuous eligibility is a State plan option for maintaining continuous coverage and retention for eligible children in Medicaid and CHIP and remains in effect under the Affordable Care Act, but there is no statutory authority for providing continuous eligibility for adults. We also note the option, discussed in section III.B of the preamble, that under § 435.603(h)(2), a State agency may choose to base continued financial eligibility for current beneficiaries on either projected annual income or on current monthly income.

Comment: We received many comments on whether renewal of eligibility for individuals whose Medicaid eligibility is determined on a basis other than MAGI should follow the procedures outlined in § 435.916(a). Many commenters wrote that these simplified processes are beneficial to beneficiaries and State agencies and should be extended to all Medicaid beneficiaries. Other commenters suggested such an extension should be a State option or should only apply to certain categories of non-MAGI eligibles. Some commenters wrote that portions of the process, including the need to check databases and the right to reconsideration without a new application, should apply to all beneficiaries.

Response: We have revised § 435.916(b) to codify the longstanding policy that the agency must renew eligibility for all beneficiaries using information available to the agency without asking for additional information from the individual, if that available information is sufficient to support continued eligibility. We also have revised § 435.916(b) to provide that, in cases where sufficient information is not available to continue eligibility, the State has the option to adopt the same procedures set forth at § 435.916(a)(3) applicable to individuals eligible on the basis of MAGI to beneficiaries eligible on non-MAGI bases.

Comment: One commenter expressed a concern that a data-driven renewal process will not be possible because a data matching system is as yet undeveloped, and the system may not be functional at the time of the implementation of the new rules.

Response: Data matching is not new and many States have data-driven enrollment and renewal processes. States currently are required to conduct data matching, in accordance with section 1137 of the Act, and most States already do much of the data matching that will be needed to implement data-driven processes, including matches with CHIP, SNAP, TANF, SSA, and State Unemployment Compensation and Wage Reporting. However, systems modernization will be needed in many States, and we note that any State expenditures before the end of 2015 for system changes necessary to adopt the renewal procedures described in § 435.916 are eligible for the 90 percent Federal matching rate outlined in the in the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule published in the April 19, 2011 **Federal Register** (76 FR 21950), provided these systems meet the standards and conditions set forth in that rule.

Comment: One commenter suggested that States create systems that enable beneficiaries to opt for on-going income reporting on a weekly or monthly basis by phone or online.

Response: The regulation text at § 435.916(c) states that individuals must report changes that affect their eligibility, and must be able to do so through all the submission modes described at § 435.907(a). States may not routinely require monthly or weekly income reporting, but individuals have the obligation to submit changes that may affect eligibility. We will be working with States and the Exchange to explore ways for simple reporting.

Comment: One commenter wrote that to prevent wrongful terminations, an automatic termination should not be allowed without a human touch review by the agency.

Response: We believe that the regulations set forth in § 435.916 and § 435.952 provide beneficiaries with appropriate protections against wrongful termination. In addition, under current rules at § 431.210 and

§ 431.211, States must provide advance notice of termination and the reason. Under § 431.10(c)(3) published in this rule, the Medicaid agency must assure that eligibility determinations are made properly and timely and are consistent with the Medicaid agency's rules. If there is a pattern of incorrect terminations, the Medicaid agency is responsible for taking corrective action. Beneficiaries also have the right to appeal any termination that they believe is erroneous, as described in § 431.220. We note that the coordinated streamlined system calls for an increased use of technology and that with proper oversight automated processes can be a part of an eligibility system that works well for both agencies and beneficiaries.

Comment: One commenter wrote that the final rule should also provide safeguards to ensure that Medicaid enrollees do not lose coverage for failure to comply with requirements of another program, such as SNAP.

Response: Under longstanding policy and Medicaid regulations, States are required to maintain eligibility for beneficiaries who meet Medicaid eligibility criteria. While a change in circumstances affecting eligibility under another program may also affect ongoing Medicaid eligibility, an individual's decision not to receive benefits from another program or his or her noncompliance with the requirements of another program may not serve as grounds for termination of Medicaid eligibility.

Comment: One commenter questioned whether it will be acceptable for the State to assume that no changes to household composition have occurred unless the household has contacted the agency. A few commenters expressed questions and concerns about the liability for recovery from beneficiaries who do not report changes and no longer meet Medicaid eligibility criteria.

Response: Our rules do not prescribe if or when a State must conduct data matching between scheduled renewals. Nothing in the Affordable Care Act changes Medicaid rules regarding liability and recovery for overpayments, which are outside the scope of this regulation.

J. Coordination of Eligibility and Enrollment Among Insurance Affordability Programs—Medicaid Agency Responsibilities (§ 435.1200)

We proposed to implement section 1943 of the Act and sections 2102(b)(3)(B) and (c)(2) of the Affordable Care Act that involve coordination between Medicaid and other insurance affordability programs, including a new requirement to delineate the State Medicaid agency's responsibilities in effectuating such coordination. This new provision also included policies previously included in § 431.636, Coordination of Medicaid with the State CHIP. These and other proposed revisions are discussed in more detail in the Medicaid Eligibility proposed rule (76 FR 51166 through 51169).

Comment: Many commented on the responsibility of the Medicaid agency for determining individuals' Medicaid eligibility based on MAGI when the single, streamlined application is submitted to the Exchange and many supported the coordination policies outlined in the Medicaid Eligibility proposed rule. Some commenters believed that State Medicaid agencies should retain responsibility over all Medicaid determinations. Others emphasized the importance of the Medicaid agency exercising supervision and oversight over Exchange determinations of Medicaid eligibility, at times focusing particularly on situations involving an Exchange operated by a private agency. Other commenters supported a fully integrated system in which all eligibility determinations are performed by a single entity.

Response: As discussed in the State Exchange Implementation Questions and Answers issued by CMS on November 29, 2011, and consistent with the Exchange final rule at 45 CFR 155.305 and 45 CFR 155.345, State Medicaid and CHIP agencies and Exchanges will have two ways of coordinating eligibility determinations. State Medicaid and CHIP agencies may make the final Medicaid and CHIP eligibility determination based on the Exchange's initial review; or the State Medicaid and CHIP agencies may accept a final eligibility determination made by an Exchange that uses State eligibility rules and standards.

We are revising § 435.1200(c), accordingly, to reflect this new flexibility and to establish the standards and guidelines to ensure a simple, coordinated and timely eligibility determination process and accurate eligibility determinations regardless of the option elected by the State. Consistent with the discussion in the preamble to § 431.10 and § 431.11, we are revising paragraph (c) to require, in States in which the Exchange will make Medicaid eligibility determinations, that the State Medicaid agency shall comply with provisions at revised § 435.10 to ensure it maintains the oversight for the Medicaid program. We also are revising paragraph (c), consistent with revised § 435.911 to ensure that individuals determined eligible for Medicaid by the Exchange based on the applicable MAGI standard are considered by the agency for eligibility on other bases which may be more advantageous to the individual, as appropriate.

To ensure a highly coordinated system of eligibility and enrollment regardless of whether the Exchange or the Medicaid agency makes the final eligibility determination, we are amending paragraphs (b) and (d) of § 435.1200. Specifically, we are amending paragraph (b)(3), which requires an agreement between the agency and the Exchange and other insurance affordability programs, to include a delineation of the responsibilities of each program to minimize burden on individuals, as well as to ensure timely determinations of eligibility and enrollment in the appropriate program based on the date the application is submitted to any insurance affordability program and compliance with paragraphs (d) through (f) and, if applicable, § 435.1200(c) to achieve a coordinated system of eligibility and enrollment among the programs. Paragraph (d), which describes the transfer of applications from an insurance affordability program to the State Medicaid agency, includes procedures to ensure that the Medicaid agency benefits from the information already collected by the other program and does not request information or documentation already provided, determines Medicaid eligibility of the individual promptly and without undue delay, consistent with the timeliness standards established under § 435.912 and in accordance with § 435.911, without requiring submission of another application; accepts findings of specific eligibility criteria made by the other insurance affordability program without further verification if such findings were made in accordance with the same policies and procedures applied by the agency (as would be the case where the Exchange makes a finding based on verification received through the hub) or approved by it; and notifies the insurance affordability program of the receipt of the individual's account information.

Because coordination between insurance affordability programs is equally important at renewals of eligibility, we have amended § 435.1200 to clarify its applicability to renewal processes. We also have added a definition of ''eligibility determination'' at § 435.4 to include an initial determination of eligibility for applicants, a renewal of eligibility for beneficiaries, and a redetermination of

eligibility for beneficiaries based on a change reported or identified. Consequently, the provisions set forth in paragraphs (b) and (d) apply not only to eligibility determination at initial application, but also at renewal and when a change in eligibility criteria is reported or identified.

For the reasons set forth in section V. of the preamble, § 435.1200 is being published as an interim final rule. We are soliciting comments on the provisions in this section to ensure a seamless and coordinated eligibility determination process regardless of the implementation choices exercised by the State.

Comment: One commenter wrote that the Exchange should consider all categories of potential Medicaid eligibility, including working disabled, medically needy, and transitional Medicaid, before determining that the applicant should not be enrolled in Medicaid. Other commenters believed that the Exchange should not make Medicaid determinations on a basis other than MAGI. One commenter stated that a basic screening by the Exchange for non-MAGI eligibility is futile because it will either be too broad or too narrow. One commenter wrote that any individual who submits an application to the Exchange should receive the same basic screening as would occur if the application were submitted to the Medicaid agency, including individuals who are ineligible for subsidies such as applicants over the age of 65.

Response: Under the final rule, the Exchange would not be required to perform a detailed evaluation of all Medicaid eligibility categories even if the Exchange is making final Medicaid eligibility determinations based on the applicable MAGI standard. However, these rules do not prevent States from designing its system in a way that enables one entity to make all eligibility determinations for all insurance affordability programs. Otherwise the Exchange will be responsible for transferring the electronic account of an individual whom it screens as potentially eligible for Medicaid on a basis other than MAGI to the State Medicaid agency for a full assessment, as described in 45 CFR 155.345(b). In addition, per 45 CFR 155.345(c), applicants who submit a single, streamlined application to the Exchange will be informed of the option to undergo a full Medicaid evaluation, and assisted in doing so using the same coordinated and streamlined procedures and without the need to submit duplicate information.

Comment: A few commenters wrote that Medicaid and CHIP agencies should be able to make binding eligibility decisions for all insurance affordability determinations.

Response: There is no statutory authority to require Medicaid and CHIP agencies to make binding determinations of Exchange and APTC eligibility; however the Exchange may contract with the Medicaid or CHIP agency to make such determinations per 45 CFR 155.110(a)(2).

Comment: A few commenters wrote that Medicaid agencies should be required to enter into agreements with other insurance affordability programs. Some commenters asked for CMS to provide model agreements. Others requested clarification on § 435.1200(c)(3), under which Sates must certify criteria needed by the Exchange to determine Medicaid eligibility. Some commenters requested that we articulate the importance of a ''CMS compliance review'' when other insurance affordability programs are determining potential Medicaid eligibility.

Response: The Medicaid agency must enter into an agreement with the Exchange operating in the State under § 435.1200(c). We have moved the requirement that the agency certify eligibility criteria needed by the Exchange to determine Medicaid eligibility to paragraph (b). We note that this provision is also identified in the Exchange final rule at 45 CFR 155.305(c). Ensuring assessments of potential eligibility for all insurance affordability programs will be considered in the development of process standards and measures for the coordinated eligibility system.

Comment: Two commenters recommended that States be able to set an annual open enrollment period for Medicaid to align with the Exchange.

Response: The statute does not permit restricting enrollment in Medicaid to an annual open enrollment period. Individuals have the right to apply for Medicaid and can be determined eligible for Medicaid at any time.

Comment: A number of commenters suggested that, to ensure that beneficiaries do not get lost in the transition between programs, the program to which the beneficiary is transferred should be required to acknowledge receipt of the information and enrollment of the individual, once completed.

Response: In the case where one eligibility system is being used to support adjudication for all programs, such acknowledgment may be unnecessary. However, where the system for adjudicating eligibility for Medicaid, CHIP, and the Exchange are not fully integrated, is important. Accordingly, we are amending § 435.1200(d) to incorporate the recommendation.

Comment: One commenter suggested that if the State Medicaid or CHIP agency determines an individual is ineligible for coverage based on evidence of fraud, no further eligibility screening for other insurance affordability programs need be completed for that individual.

Response: States are required to terminate eligibility in situations involving erroneous determinations of eligibility based on inaccurate information, as in cases involving fraud. In such circumstances, the agency would be able to reliably assess potential eligibility for another insurance affordability program, and therefore, it would not be consistent with the regulations for it to transfer the individual's application to another program.

Comment: We received several comments supporting the required coordination among insurance affordability programs, but also advocating that we require adoption of a shared eligibility service to eliminate the need for electronic transferring of an individual's account information among programs.

Response: In accordance with § 435.1200, States must adopt a coordinated business process and supporting systems to permit an efficient and seamless evaluation of an individual's eligibility for APTCs and reduced cost sharing through the Exchange, Medicaid, CHIP and the Basic Health Plan if applicable. This could be accomplished through the use of a common system or shared eligibility service to adjudicate placement of most individuals. We have issued guidance about how programs should allocate costs for shared systems and services. We are supporting multiple architectures and pathways which reflect both States' intentions regarding their Exchanges, the current architecture and performance of existing eligibility systems, desire for integrated solutions that include other State programs, and other considerations.

Comment: One commenter requested that States be required to obtain permission from an individual before any individual information is transferred to another insurance affordability program for evaluation of eligibility for such program.

Response: Applicants filing a single, streamlined application have the option of applying only for enrollment in a qualified plan in an Exchange without an APTC. If the applicant seeks a

determination of eligibility for an insurance affordability program, he or she must apply for all insurance affordability programs and will be informed that information may be shared with such programs.

Comment: Many commenters supported providing the opportunity for applicants to enroll in other insurance affordability programs while a determination of Medicaid eligibility on a non-MAGI basis is pending. A few commenters opposed this policy and a few others requested clarification of the interaction of Exchange coverage pending determination of Medicaid eligibility based on disability with retroactive Medicaid eligibility. One commenter questioned whether an insurer could recoup payments made on behalf of an individual and bill Medicaid for those costs when someone who has been enrolled through the Exchange is subsequently determined to be eligible for Medicaid and is eligible for retroactive eligibility.

Response: Individuals who are eligible for Medicaid on the basis of MAGI but may be eligible on another basis should have access to coverage pending completion of a sometimes more time-consuming process of determining Medicaid based on such basis. Therefore, we are retaining the policy at § 435.1200(e)(2) of this final rule to enable individuals who are otherwise eligible for coverage through the Exchange and other insurance affordability programs to enroll in such coverage while a determination of Medicaid eligibility is pending. Once determined, the effective date of Medicaid eligibility is defined in accordance with current regulations at renumbered § 435.915, including up to 3 months of retroactive eligibility prior to the month of application, as applicable under current law. During such period of retroactive coverage, customary rules regarding third party liability apply and Medicaid would serve as a secondary payer to the coverage provided through the Exchange. The QHP in which the individual has been enrolled will not be able to recoup payments from the Medicaid program.

Comment: Some commenters wrote that the proposal to provide Exchange coverage pending a determination based on disability should be extended to all pending determinations of Medicaid eligibility on a basis other than the applicable MAGI standard.

Response: We have revised § 435.1200(e)(2) to permit State agencies to transmit to other insurance affordability programs the electronic accounts of individuals undergoing eligibility determinations on any basis other than the applicable MAGI standard as appropriate.

Comment: One commenter wrote that we should issue guidance that any ''insurance affordability assistance,'' including APTCs and cost sharing subsidies, be counted toward meeting spend down requirements under Medicaid.

Response: Incurred medical expenses are defined as Medicare and other health insurance premiums, deductibles and coinsurance charges, as well as medical and remedial care, that are not subject to payment by a third party. In other words, an incurred medical expense is an expense the individual has a legal obligation to pay. The only exception is for expenses paid entirely with State or local program funds, which can be considered to be incurred medical expenses for spend-down purposes. Assistance such as APTCs and cost-sharing subsidies are not expenses for which an individual has incurred an obligation to pay. However, expenses for premiums and other cost sharing obligations that an individual is liable to pay for obtaining coverage through the Exchange may be considered an incurred medical expense for purposes of spend-down.

Comment: We received many comments on the Internet Web site described at proposed § 435.1200(d), redesignated as § 435.1200(f). Many commenters wrote that we should require a single enrollment Web site with information on all insurance affordability programs rather than allow multiple Web sites with information from an array of entities. Some commenters suggested specific Web site functions such as portals to personalized application assistance and plan enrollment capacity. Another commenter requested model Web site content. One commenter suggested that our regulation should include all functions listed in section 1561 of the Affordable Care Act.

Response: The Affordable Care Act provides that Web sites shall be accessible and support the range of applicant and beneficiary services required, including accessing information on the insurance affordability programs available in the State, and applying for and renewing coverage. States can and are encouraged to operate a single Web site, but are not required to do so as long as the Web sites of the different insurance affordability programs are linked to enable individuals to access the information and range of services required. We believe that States can adhere to the regulations in § 435.1200(f) in conjunction with complying with the recommendations adopted by the Secretary in September 2010 on the interoperable and secure standards and protocols that facilitate electronic enrollment, as required by section 1561 of the Act. Additional guidance will be released on standards. We also note that § 435.908(b) requires States to make application assistance available through an Internet Web site, among other venues.

Comment: Some commenters expressed preferences for the plan enrollment process after Medicaid eligibility had been determined. One commenter suggested that the Exchange be required to support informed choice of a Medicaid health plan if it has made the Medicaid eligibility determination. A few commenters requested that agencies be required to provide an online plan enrollment option, regardless of which entity makes the Medicaid determination. Some commenters requested that the enrollment process be clearly separated from the application process.

Response: The responsibility of the Medicaid agency over enrollment activities is addressed at § 431.10. While we encourage States to maximize the accessibility and simplicity of the plan enrollment process, plan enrollment activities are beyond the scope of this rule.

Comment: One commenter suggested that because Exchanges do not require SSNs of non-applicants, the agency would not have an appropriate personal identifier, complicating the ability to establish interfaces to share data between different insurance affordability programs.

Response: The requirements for a transfer of an electronic account as described in § 435.1200(f) and (g)(2) are to transmit all relevant information related to an applicant which is obtained by the agency through the application, including information obtained through the verification process and any relevant non-applicant information. The lack of an SSN for a non-applicant member of the applicant's household should not affect the transfer of applicant information.

Comment: A number of commenters noted the importance of readability and understandability particularly for the Web site in our Medicaid Eligibility proposed rule at § 435.1200(d), and suggested that the Web site should be written at no greater than a 4–5th grade reading level.

Response: We will consider it as we develop guidance that will address readability and literacy standards.

Comment: Many commenters articulated the importance of accessibility of the Web site for persons who are limited English proficient, as well as people with a disability in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act. Many commenters recommended that the Web site should be available in languages other than English, including Spanish, and the second most prevalent language in service area. Commenters also suggested that vital documents should be translated, depending on the numbers of limited English proficient persons served and importance of the information provided, and that the Web site include tag lines to obtain oral interpretation of what is on the Web site. Other commenters stated that Web sites and kiosks should meet disability accessibility standards.

Response: We have provided that information be conveyed accessibly for individuals who are limited English proficient and individuals with disabilities in § 435.1200(f) by referencing revised language at § 435.905(b), discussed in section III.E. of the preamble We had noted in the preamble of the Medicaid Eligibility proposed rule that Web sites, interactive kiosks and other information systems would be viewed as being in compliance with section 504 if such technologies meet or exceed section 508 of the Rehabilitation Act standards. We encourage States to review Web Content Accessibility Guidelines (WCAG) 2.0 level AA Web site standards when designing their Web sites and other systems. These standards promote increased accessibility in information and communication technology for people with disabilities and thus, have been considered for adoption as section 508 standards in the recent proposed rule issued by the Architectural and Transportation Barriers Compliance Board (Access Board) (76 FR 76640, December 8, 2011). See *http://www.gpo.gov/fdsys/pkg/FR–2011–12–08/pdf/2011–31462.pdf#page=1.*

Comment: A number of commenters expressed concern about the treatment of incarcerated individuals. Some commenters believed that greater alignment between the eligibility of incarcerated individuals under the Medicaid and Exchange regulations should be achieved. Several commenters noted that incarceration is not a factor of eligibility, and suggested that State Medicaid agencies be required to suspend Medicaid eligibility rather than terminate individuals who are incarcerated. One commenter suggested States be required to automatically reinstate eligibility once incarcerated individuals are discharged. Other commenters believed that we should achieve alignment with the Exchange rules by amending § 435.1010 to provide that an individual is not considered to be ''an inmate of a public institution'' for purposes of § 435.1009 if he or she is in a public institution pending disposition of charges. One commenter requested clarification on the availability of FFP in expenditures for treatment provided to incarcerated individuals outside of the prison system.

Response: The issues raised by the commenters are beyond the scope of this rulemaking. Subparagraph (A) of the matter following section 1905(a)(29) of the Act excludes from the definition of ''medical assistance'' payments for care or services for any individual who is an inmate of a public institution, except as a patient in a medical institution. Therefore, FFP is available only for inpatient services in a medical institution that is not part of the penal system. An individual is considered an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities, regardless of adjudication status. Nothing in the Affordable Care Act alters this section of the Act.

Comment: Several commenters suggested that we amend § 435.907 to expressly provide that ''other authorized persons acting on behalf of an applicant'' includes corrections department employees and others working on behalf of incarcerated individuals.

Response: Corrections department employees and others working on behalf of incarcerated individuals are not precluded from serving as an authorized representative of incarcerated individuals for purposes of submitting an application on such individual's behalf. § 435.908 of the regulations provides that the agency must allow any individual of the applicant's choice to assist in the application or renewal process.

Comment: One commenter requested clarification regarding the inclusion of incarcerated individuals in the household of other family members.

Response: Incarcerated individuals are treated no differently than non-incarcerated individuals in determining the household composition of individuals seeking coverage.

K. Single State Agency (§ 431.10 and § 431.11)

We proposed to allow Medicaid agencies to delegate to Exchanges that are public agencies authority to make Medicaid eligibility determinations as long as the single State Medicaid agency retains authority to issue policies, rules and regulations on program matters and to exercise discretion in the administration or supervision of the plan. Our proposal was based in part on the Exchange proposed rule, which provided that Exchanges would make Medicaid eligibility determinations to implement section 1943(b)(1)(B) of the Act. We note that this is still a relevant consideration although in the Exchange final rule, Exchanges may make Medicaid eligibility determinations, or Medicaid agencies may make such determinations, subject to certain policies designed to ensure a timely and coordinated eligibility determination that are set forth in § 435.1200 of our final rule.

In the Medicaid Eligibility proposed rule (76 FR 51169), we noted that if Exchanges are established as a non-governmental entity as allowed by the Affordable Care Act, the coordination provisions in the law may be more challenging and, for example, could require the co-location of Medicaid State workers at Exchanges or other accommodations to ensure coordination is accomplished. We solicited comment on approaches to accommodate the statutory option for a State to operate an Exchange through a private entity, including whether such entities should be permitted to conduct Medicaid eligibility determinations consistent with the law.

Comment: Commenters provided a wide spectrum of comments regarding the single State agency requirement. In general, commenters supported some delegation to Exchanges of authority to make Medicaid eligibility determinations. However, many commenters expressed the view that eligibility determinations are inherently governmental (involving confidential information and having fiscal implications) and that the final rule should prohibit non-profit Exchanges, or any private entities under contract to Exchanges, from making Medicaid eligibility determinations. They stated that the eligibility and enrollment function should be conducted by State or county agencies utilizing merit system personnel protections and/or that non-profit Exchanges should contract with State Medicaid agencies to conduct Medicaid eligibility determinations. They commented that if a Medicaid agency delegates eligibility to private entities, it will not be in a position to resume the function if anything goes acutely wrong; and that eligibility determinations necessarily

require worker discretion. One commenter advocated that for program integrity and fairness, only government employees should make Medicaid eligibility determinations. However, other commenters advocated modifying the current single State agency policy to allow non-governmental entities, including nonprofits, to make Medicaid eligibility determinations. They sought maximum flexibility for State Exchanges to use private contractors. They further wanted clarification that the single State agency responsibility does not compromise the ability of Exchanges, including quasi-governmental entities, to make eligibility determinations. These commenters strongly endorsed a coordinated system such as having one application, and one verification process for multiple programs and noted that not allowing Exchanges operating as a nonprofit to make Medicaid eligibility determinations would undermine coordination. One commenter requested that we delete the requirement for merit system protection employees to make eligibility determinations. Another urged HHS to consider options for allowing nonprofit operated Exchanges and other third parties to make final Medicaid eligibility determinations without the requirement of State employee co-location.

Response: We anticipate that States that are establishing Exchanges will employ various organizational structures, including non-profits and quasi-governmental organizations, and that those entities may employ private contractors that are ''eligible entities'' in accordance with section 1311(f)(3) of the Affordable Care Act and 45 CFR 155.110(a) for some eligibility functions. To promote coordination and a positive customer experience and ensure that Exchanges are able to make Medicaid eligibility determinations, even when they are non-governmental, we are adding a new § 431.10(c)(3) to allow the delegation of Medicaid eligibility determinations to Exchanges, whether they are governmental or non-governmental organizations. However, if the Exchange is operated by a non-governmental entity, the authority to delegate Medicaid eligibility determinations is limited to MAGI cases only. Similarly, we are also extending authority for Exchanges that contract with private entities in § 431.10(c)(3) to conduct eligibility determinations for MAGI cases. We believe that the simplified eligibility policies and processes applicable to MAGI determinations support this policy, particularly as we anticipate that much of the process will be automated.

As is true whenever a single State agency delegates authority to another entity to make eligibility determinations, we continue to require that the single State agency must supervise the administration of the plan, is responsible for making the rules and regulations for administering the plan, and is accountable for the proper administration of the program. These are inherently governmental aspects of Medicaid program administration. In light of the new types of delegations that may arise and the importance of oversight and protections, we have also added provisions to the regulation that require the single State agency to assure that eligibility determinations are made consistent with State policies and in the best interests of applicants and beneficiaries, including by prohibiting improper incentives and avoiding conflict of interests. For example, compensation for entities making such determinations may not be linked to a pre-set target for eligibility determinations. The delegation authority also applies to any Exchange operated by the Federal government, in which case the federally-facilitated Exchange (FFE), like any other entity with delegated authority, would follow the single State agency's eligibility rules. If the Exchange is a public entity, the single State agency will be allowed to delegate eligibility determination to the Exchange for MAGI-excepted individuals. Alternatively, whether the Exchange is a public or nongovernmental entity, the single State agency may arrange to have the Exchange screen for possible Medicaid eligibility for MAGI-excepted individuals as set forth in § 435.911 and coordinate the transfer of the application to the Medicaid agency, as set forth in § 435.1200.

To conform the rules, we also broaden the requirement in § 431.10(e) to include nongovernmental entities (including contractors and agents) performing services for the Medicaid agency.

Comment: The overwhelming majority of commenters sought rules that strengthen the oversight role of the single State agency in any delegation situations, whether Medicaid delegated eligibility determination functions to another governmental or to a non-governmental entity. They noted that even when determinations are made by government-operated Exchanges, it will be important for the single State agency to set the policies and to assume responsibility for accurate determinations in accordance with its policies and urge the Secretary to assure that this happens. They sought regulatory language that ensures that the single State agency ban fiscal incentives that discourage enrollment (including standards to ensure that eligibility is not influenced by differences in available Federal matching rates), ensure that improper incentives/outcomes are not permitted to monitor the entities' performance to identify any such improprieties, and if found, that they be properly addressed. They sought co-location requirements for public employees if eligibility functions are being conducted by non-governmental entities. They urged requirements that Medicaid eligibility determinations be made by State merit system personnel, and that there be transparency regarding staff making determinations, as well as for any guidance issued by the single State agency for a delegated entity.

In addition, many commenters wanted to see a larger role for CMS oversight in cases where the single State agency delegates its eligibility function to another entity, including ensuring that CMS review compliance with this provision in its oversight and audits of States, as well as including compliance with this provision in future performance standards CMS will be issuing. One commenter sought a requirement for the single State agency to obtain HHS approval of a plan that details how eligibility determinations will be made. Several commenters sought a requirement that States submit all contracts with a value exceeding $5 million to CMS for approval as is done by SNAP. Commenters further sought mechanisms for advocates to provide information to CMS on the status of State compliance with the Federal requirements.

Response: We are strengthening applicable safeguards in § 431.10, which would apply whether governmental or non-governmental entities are making eligibility determinations. The regulations intend to ensure that State agencies maintain their responsibility to oversee eligibility activities and ensure that Medicaid eligibility rules are implemented properly. These provisions apply not just when Exchanges conduct Medicaid eligibility determinations, but also when State Medicaid agencies allow other State agencies or county agencies, for example, to make eligibility determinations. In particular, § 431.10(c)(4) will require the single State agency to be responsible for ensuring that eligibility determinations are made consistent with its policies, and if there is a pattern of incorrect, inconsistent, or delayed determinations

that corrective actions are promptly instituted and/or the delegation, or contract, is terminated. In this context, oversight and corrective actions would pertain to the overall implementation of the single State agency's rules by the entity making eligibility determinations, not to case-by-case reviews. This could include corrective action plans, financial sanctions, and even termination of agreements if warranted.

As previously described, § 431.10(c)(5) will require that the single State agency be responsible for assuring eligibility determinations will be made in the best interest of applicants and beneficiaries and specifically for assuring that there is no conflict of interest by any entity making eligibility determinations, whether by delegation or contract; and improper incentives and/or outcomes are prohibited, monitored, and if found properly and promptly addressed through corrective actions. Thus, the rule is prohibiting any arrangements that link the results of eligibility determination dispositions to remuneration. Moreover, the agreement between the Medicaid agency and Federal or State and local agencies is being broadened to include agreements with ''entities'' as well, to account for non-governmental entities. To ensure accountability, we are requiring that such agreements be in writing and available upon request. Such agreements may be subject to State FOIA laws that require disclosure, but to ensure uniform accountability for such arrangements, we are including this requirement in our regulation. We believe that transparency will strengthen program operations. To ensure that each parties' responsibilities are clearly designated, we are setting out the following minimum components of such agreements:

- The relationships and respective responsibilities of the parties (including responsibilities regarding identification of potential and transfer of non-MAGI cases);
- The quality control and oversight plans by the single State agency to review determinations made by the delegee to ensure that overall determinations are made consistent with the State agencies' eligibility polices;
- The reporting requirements from the delegee making Medicaid eligibility determinations to the single State agency to permit such oversight.
- An assurance that the delegee will comply with all confidentiality and security requirements in accordance with sections 1902(a)(7) and 1942 of the Act and part 431, subpart F, for all applicant and beneficiary data; and
- An assurance that merit system personnel protection principles are employed by the entity responsible for the Medicaid eligibility determination.

In light of the provisions described above, which will support the integrity and accuracy of the Medicaid eligibility process, we do not agree that requiring physical co-location for public employees is necessary. However, States may provide for co-location if they choose to do so. While we are not requiring that public employees review each determination, coordination between other entities and the single State agency staff can help the State agency implement its oversight role when it delegates eligibility determinations. Moreover, we are adding a requirement to the agreements between the single State agency and the entity that has been delegated eligibility for ''an assurance that applicants and beneficiaries are made aware of how they can directly contact and obtain information from the single State agency'' to respond to commenters concerns about applicant and beneficiary access to public employees.

Finally, we are making conforming changes at § 431.11(d) to already existing requirements to include situations when eligibility has been delegated to non-governmental Exchanges and/or private contractors that are providing eligibility services. State plans will still require explicit descriptions of the staff and functions of the entity that is being delegated eligibility determinations as they must today.

Comment: Some commenters questioned the rules regarding using automated eligibility systems to make Medicaid eligibility determinations. They sought clarification that States be permitted to use automated systems to apply Medicaid validated logic through system-based eligibility algorithms to make Medicaid eligibility determinations based on MAGI. One commenter opposed using ''co-location policies'' and wanted Medicaid agencies to have the flexibility to employ the merit protection principles by approving a system-based eligibility algorithm developed and implemented by a private or non-profit entity contracting for eligibility determinations with periodic sampling of Medicaid determinations by public employees.

Response: Whether conducted by a public or private entity, we anticipate that eligibility determinations using MAGI-based standards will be highly automated, utilizing business rules developed by the State Medicaid agency. In the most simplified cases, which can be determined without human intervention or discretion, we are clarifying that automated systems can generate Medicaid eligibility determinations, without suspending the case and waiting for an eligibility worker (public or private) to finalize the determination, provided that the Medicaid agency retains oversight responsibilities for all decisions made through the automated system. We will be issuing future guidance on this topic.

Comment: One commenter requested clarification on the range of public agencies that can perform MAGI and non-MAGI eligibility determinations.

Response: Our regulations provide that public agencies, including Exchanges, may make MAGI and non-MAGI eligibility determinations. Longstanding Medicaid regulations have allowed Medicaid agencies to delegate to other State agencies (such as agencies administering TANF and SNAP programs) as well as to local Medicaid offices (such as those administered by counties). These delegations will continue to be permitted under our final rule, although the Single State agency's authority and oversight responsibilities are identified with greater specificity.

Comment: One commenter requested that we clarify what ''best interest'' of the applicant/beneficiaries and ''improper outcomes'' mean in § 431.10(c)(4). Another requested detail on the term ''corrective action'' and ''conflict of interest.''

Response: ''Best interest of applicants and beneficiaries,'' and ''corrective action'' are not new terms for the Medicaid program. They are not used as technical terms but to connote their plain meaning. How these terms apply may depend on circumstances. ''Improper outcomes'' and ''conflict of interest'' are intended to convey certain specific circumstances that are not in the best interest of applicants and beneficiaries, and may require corrective action. We believe States have experience with and are able to properly interpret these provisions but will continue to work with States in the context of implementing this final rule.

Comment: One commenter requested that CMS resolve the conflict with SNAP that prohibits private eligibility determinations.

Response: We will work with States and the SNAP program to consider ways to promote coordination.

Comment: One commenter sought a clearer statement that FFEs would be required to follow State eligibility rules and policies.

Response: Under the Exchange eligibility rule at § 155.305, Exchanges will be able to make final Medicaid eligibility determinations, provided that

they follow the policies set forth by the single State agency. This applies equally to State-based Exchanges and to FFEs.

L. Implementing Application of MAGI to CHIP (§ 457.10, § 457.301, § 457.305, § 457.315, and § 457.320)

We proposed that States base income eligibility for CHIP on MAGI consistent with section 1902(e)(14) of the Act. Because section 2107(e)(1)(F) of the Affordable Care Act applies MAGI methodologies to CHIP ''in the same manner'' as they are applied to Medicaid, we proposed applying the Medicaid MAGI methodologies to CHIP without modification.

We outlined proposed changes to following existing sections of the CHIP regulations:

- Definitions and use of terms (§ 457.10).
- Definitions and use of terms (§ 457.301).
- State plan provisions (§ 457.305).
- Other eligibility standards (§ 457.320).

In addition, we proposed the addition of new ''Application of MAGI and household'' section (§ 457.315), to implement the CHIP MAGI components of the law. These proposed revisions are discussed in more detail in the Medicaid Eligibility proposed rule (76 FR 51170 through 51171).

Comment: We received several general comments concerning the proposed application of MAGI to CHIP that mirrored comments concerning the proposed application of MAGI to Medicaid. Some commenters expressed support for the proposed MAGI definitions, including the exception to MAGI provided for Express Lane eligibility determinations. One commenter noted a general concern about the complexity of the MAGI definition, and other commenters raised concerns about the potential impact of the proposed MAGI rules on families in particular circumstances, such as families with stepparent income.

Response: Our responses to general comments on the application of MAGI to Medicaid apply also to CHIP. See section III.B of this preamble.

Comment: We received several comments requesting that the proposed grace period for applying the MAGI methodology to current Medicaid enrollees described in § 435.603(a) should equally apply to CHIP enrollees.

One commenter requested clarification about whether CHIP children who become eligible for Medicaid in 2014 would be entitled to 12 months of continuous eligibility if the CHIP plan offers continuous eligibility, but the Medicaid plan does not.

Response: We are adding a paragraph to § 457.315 to clarify that the MAGI grace period for Medicaid described in § 435.603(a)(3) applies equally to CHIP. This section clarifies that ongoing eligibility for children determined eligible for CHIP on or before December 31, 2013, will not be determined according to MAGI until March 31, 2014 or the next regularly-scheduled renewal, whichever is later.

Regarding 12 months of continuous eligibility, a child who is enrolled in CHIP with 12- month continuous eligibility as of January 1, 2014 would be able to retain CHIP coverage until the end of their 12 month continuous eligibility period, as that is when the child's next regular renewal would occur.

Subsequent renewals for Medicaid-eligible children would be conducted in accordance with § 435.916.

Comment: We received several comments regarding the conversion of CHIP income standards to a MAGI-based income standard. Some commenters recommended that CMS limit the ability of States to set their own income standards and that the income standard conversion ensure that no child who would have been eligible under current CHIP income standards would become ineligible under the new MAGI standard.

Additionally, a few commenters recommended that CMS indicate that the Affordable Care Act's maintenance of effort (MOE) provision requires that the CHIP MAGI standard be greater than or equal to the income level applied as of March 23, 2010. Some commenters also recommended that the CHIP regulations include a provision to clarify that the Medicaid MAGI standard must be greater than or equal to the standard applied on March 23, 2010.

Response: Guidance regarding the process for converting current income standards under Medicaid and CHIP to MAGI-equivalent standards is beyond the scope of this rule and will be provided in future guidance, which will require States to convert net income standards to MAGI-equivalent standards in a manner that ensures that affected populations, in the aggregate, do not lose coverage. Issues around applicability of the MOE are outside the scope of this Medicaid Eligibility proposed rule.

Comment: We received some general comments about the provision of continued coverage for children made ineligible for Medicaid as a result of the MAGI conversion under section 2101(f) of the Affordable Care Act, as proposed in § 457.310(b)(1)(iv). Some commenters recommended that pre-MAGI coverage levels be continued indefinitely, but one commenter felt that this approach would undermine the consistency in eligibility standards and methods envisioned under the Affordable Care Act.

Response: Section 2101(f) of the Affordable Care Act provides that States maintain coverage under a separate CHIP program for children who lose Medicaid eligibility due to the elimination of income disregards as a result of the conversion to MAGI. The statute limits the application of section 2101(f) of the Affordable Care Act to individuals who are made ineligible for Medicaid directly ''as a result'' of the elimination of income disregards under MAGI-based financial methods. We interpret this provision as relating to children enrolled in Medicaid as of December 31, 2013, so that the protection afforded under section 2102(f) will take effect on the date of the child's Medicaid first renewal, after the MAGI grace period described in § 435.603(b)(3). This provision does not apply to individuals made ineligible for a separate CHIP as a result of the elimination of income disregards. Thus, the eligibility of children who become eligible for CHIP under section 2101(f) of the Affordable Care Act will be protected from the impact of the elimination of disregards under MAGI methods until the child's first renewal of CHIP eligibility in accordance with § 457.343 (that is, one year after the child's enrollment in CHIP).

We have deleted § 457.310(b)(1)(iv) and added a new paragraph § 457.310(d) to provide additional clarification regarding the protection afforded by section 2101(f) of the Affordable Care Act.

Comment: We received a few comments requesting clarification about the applicability of the CHIP enhanced FMAP rate after the conversion to MAGI. Several commenters requested clarification on whether States that currently claim the CHIP enhanced FMAP for child health expenditures for children with incomes above 300 percent of the FPL may continue to do so after the MAGI conversion or whether these States will be subject to the requirements at section 2105(c)(8) of the Act, which limits the CHIP FMAP rate for expansions of CHIP above 300 percent of the FPL after February 4, 2009.

One commenter asked CMS to clarify whether block of income disregards applied to the CHIP income standard prior to 2014 will be incorporated into a State's MAGI CHIP income standard,

and whether this would be considered permissible in light of the preclusion of block of income disregards under the Affordable Care Act after 2014.

One commenter recommended that all CHIP children who become eligible for Medicaid as a result of the conversion to MAGI and the expansion of Medicaid coverage for children up to 133 percent of the FPL should be eligible for CHIP enhanced FMAP. Another commenter specifically recommended that CHIP children made eligible for Medicaid because of changes in *Sneede* vs. *Kizer* budgeting should retain Title XXI funds.

Response: States that currently claim the CHIP enhanced matching rate for coverage of children with effective family income above 300 percent of the FPL, based on State plan provisions in effect on February 4, 2009, will continue to be eligible for CHIP enhanced FMAP for such children after the conversion to MAGI even if the converted MAGI income standard exceeds 300 percent of the FPL. States that have expanded CHIP through the use of block of income disregards prior to 2014 will continue to cover these children because the law requires that the MAGI-converted income standard take into account existing disregards, including block of income disregards.

In terms of the claiming of Title XXI funds for separate CHIP children who become eligible for Medicaid, CHIP enhanced FMAP will continue to be available for children whose income is greater than the Medicaid applicable income level (defined in § 457.301 and based on the 1997 Medicaid income standard for children), regardless of whether those children are enrolled in Medicaid or CHIP. This standard will be converted for MAGI and States will qualify for CHIP enhanced FMAP for expenditures on behalf of children whose MAGI-based household income is above the converted MAGI standard. Guidance about the conversion of the Medicaid applicable income level for MAGI will be provided in the future.

M. Residency for CHIP Eligibility (§ 457.320)

We proposed to modify the definition of residency under CHIP for non-institutionalized children who are not wards of the State to reference the Medicaid definition for children at proposed § 435.403(i) for individuals under age 21. Aligning residency standards was proposed to ensure coordination between all insurance affordability programs, including advanced premium tax credits.

Comment: Many commenters supported our efforts to align residency definitions for all insurance affordability programs. Some commenters provided suggestions similar to those made regarding the Medicaid residency definition to achieve further alignment. One commenter specifically recommended more clarity on how the residency definition would be applied in States that adopted 12-month continuous eligibility in CHIP.

Response: We have kept residency definitions aligned in the final rule. To promote further alignment, we have also adopted the Medicaid residency standards for adults for any adult pregnant women determined eligible under the CHIP State plan. Our responses to general comments on residency regulations for Medicaid also apply to CHIP. See section III.C of this preamble.

Changes in State residency (that is, a move out of State) are an acceptable exception to a 12-month continuous eligibility period, as described in our December 16, 2009 State Health Official Letter regarding CHIPRA Performance Bonus Payments, available at *http://www.cms.gov/smdl/downloads/sho09015.pdf.*

Comment: One commenter recommended that we use the term ''in the custody and care of a State'' rather than ''ward of the State'' to align our terminology with the Administration for Children and Families.

Response: We do not believe this change is necessary and we are concerned that it could be seen as reflecting an unintended change in the current meaning of the regulation. Thus, we will be retaining the term ''ward of the State'' to avoid any confusion.

N. CHIP Coordinated Eligibility and Enrollment Process (§ 457.330, § 457.340, § 457.343, § 457.348, § 457.350, § 457.353, and § 457.380)

We proposed to implement section 2107(e)(1)(O) of the Affordable Care Act which applies to CHIP the same enrollment simplification standards described for Medicaid under the new section 1943 of the Act, including standards for applications, coordination with other insurance affordability programs, renewals, and verification. These standards build on existing practices and provisions in section 2102(b)(3)(B) of the Affordable Care Act relating to coordinated eligibility and enrollment between Medicaid and CHIP. The regulatory amendments proposed correspond to proposed changes and additions to Medicaid at § 435.905 through § 435.908, § 435.916, § 435.940 through § 435.956, and § 435.1200 (these proposed provisions are discussed fully in the Medicaid Eligibility proposed rule (76 FR 51160 through 51162; 51165 through 51166; and 51170)).

We note that any references to ''State'' in this section refer to the CHIP agency, and that any references to ''enrollee'' in CHIP have the same meaning as ''beneficiary'' in Medicaid.

Comment: We received several comments about the application and enrollment process in CHIP that mirrored comments concerning the application and enrollment process for Medicaid, including comments about meaningful access for individuals with limited English proficiency, the Internet Web site, use of the single, streamlined application for multi-benefit applications, and the timeliness of application processing. Many commenters supported the overall establishment of a unified application and enrollment process for all insurance affordability programs.

Response: We recognize the value of clear guidance and consistent standards and procedures to support this alignment without limiting State flexibility to design implementation strategies, and in this final rule, we retained alignment of the application and enrollment procedures between insurance affordability programs. Our responses to general comments on application and enrollment procedures for Medicaid apply also to CHIP. See sections III.D and H of this preamble.

Changes that have been made to the Medicaid standards for applications and enrollment in the final rule generally apply to CHIP through cross-reference, but we have also updated CHIP language where appropriate to ensure continued alignment. Specifically, we have added and/or revised definitions for ''Advance payments of the premium tax credit (APTC),'' ''application,'' ''eligibility determination,'' and ''non-applicant.'' Moreover, we have adopted the term ''renewal'' instead of ''redetermination,'' consistent with Medicaid. Also, we have added cross-references to § 435.906 and § 435.908 to replace proposed text at § 457.340(a) and have moved § 457.335 to § 457.340(a) to further clarify the alignment of standards for application and renewal assistance. As described in section III.D of this preamble, we are adding additional standards for timely eligibility determinations for Medicaid at § 435.912. These also are adopted for CHIP by cross-reference in § 457.340(d) in the final rule.

Consistent with our request for comments on the interim final Medicaid regulations at § 435.912 and § 435.1200, we are soliciting additional comment and issuing as an interim final rule

paragraphs (c)(1) and (d) of § 431.300, paragraph (b)(6) of § 431.305, paragraph (d) of § 457.340, § 457.348, and the paragraphs (a), (b), (c), (f), (i), (j), and (k) of § 457.350 that are added or revised in this rule.

Comment: Several commenters expressed concerns with the proposal in § 457.340(b) to require SSNs as a condition of eligibility in CHIP because of the potential barriers it could impose on some individuals. A few commenters noted that this requirement may be problematic for States that have elected the CHIP option to provide prenatal care for pregnant women. Commenters recommended that CMS continue to retain State flexibility regarding the SSN requirements in CHIP, or at a minimum, that CMS clarify that SSN requirements only apply to individuals who have SSNs. One commenter supported the requirement for an SSN and expressed concern that data systems might not be able to process applications in real time without this information. We also received comments about the use of SSNs for non-applicants in CHIP, which mirrored comments about the use of SSNs for non-applicants in Medicaid.

Response: We do not believe that aligning the SSN policy for CHIP with the policy in Medicaid will pose a significant burden on families or States. In fact, many separate CHIPs have successfully implemented SSN requirements without imposing a significant burden on families. The Medicaid regulations at § 435.910(e) and (f), incorporated by cross-references in the CHIP regulations at § 457.340(b), clarify procedures for applicants who have not yet been issued an SSN and emphasize that the State may not deny or delay services to otherwise eligible applicants pending the issuance of a SSN. SSNs are not required from individuals who are not eligible for an SSN.

Our responses to general comments on the use of SSNs of non-applicants in Medicaid apply also to CHIP. See section III.D of this preamble. Changes that have been made to the Medicaid regulations regarding non-applicant SSNs in the final rule are adopted for CHIP via cross-reference at § 457.340(b).

Comment: We received one comment concerning our proposal to remove the mention of enrollment caps in § 457.340(a). The commenter requested confirmation that States are able to retain their authority to implement enrollment caps and recommended that CMS issue additional clarification about the extent of application assistance that CHIP agencies are required to provide if CHIP enrollment is capped.

Response: Nothing in the Medicaid Eligibility proposed rule addresses a State's ability to implement enrollment caps. However, the existence of an enrollment cap does not relieve a CHIP agency to accept the single streamlined application and screen for all insurance affordability programs regardless of whether CHIP enrollment is capped, or to otherwise comply with the regulations regarding CHIP's role in the coordinated eligibility and enrollment system.

Comment: We received several general comments about coordination between insurance affordability programs, including concerns about the process for transferring application data, suggestions for screening metrics and requests for clarification about the implication of the Medicaid Eligibility proposed rule on a State's PERM. These comments mirrored comments that were received on the corresponding Medicaid provisions and are addressed in section III.J. of the preamble.

In addition, we received several CHIP-specific comments. Some commenters requested that CMS require CHIP agencies to allow Medicaid agencies to make CHIP determinations to reduce potential gaps in coverage. One commenter was concerned about the allocation of the CHIP enhanced FMAP for children who were enrolled in CHIP but subsequently determined eligible for Medicaid on a basis other than MAGI, according to the process outlined in § 457.350(j). One commenter recommended a slight rewording of § 457.350(i) and (j) to clarify that screening for Medicaid eligibility is required before an individual is found potentially eligible for other insurance affordability programs. One commenter questioned whether States needed to give applicants a choice to enroll in CHIP or the Exchange.

Response: Our responses to general comments on the coordination among other insurance affordability programs for Medicaid apply also to CHIP. See section III.J of this preamble. We have also revised the final CHIP regulations where appropriate to ensure continued alignment with Medicaid regulations, including revisions to § 457.348 to provide further flexibility for States in developing their implementation strategies with respect to the determination of eligibility for CHIP by the Exchange. As we noted, we are soliciting additional comment and issuing as interim final § 457.348 and the paragraphs of § 457.350 that are added or revised in this rule.

States already permit Medicaid agencies to make CHIP eligibility determinations to promote coordination between programs. We do not have the authority to require that States must enable their Medicaid agencies to make final CHIP eligibility determinations and, under the final regulation, States will continue to have flexibility in this regard. Other provisions of the regulation will help to ensure seamless coordination between Medicaid and CHIP.

Regarding the Federal reimbursement rates for children enrolled in a separate CHIP who are identified according to § 457.350(j) as potentially eligible for Medicaid on a basis other than MAGI, States are able to claim the CHIP enhanced FMAP for these children pending final determination of Medicaid eligibility.

We have also revised § 457.350(i) and (j) for improved clarity and alignment with Medicaid and the Exchange. As noted in the Medicaid Eligibility proposed rule, these provisions apply not only to children but also to all parents and other household members applying for coverage on the single, streamlined application.

Finally, regarding the coordination between CHIP and the Exchange, the Affordable Care Act does not permit giving applicants a choice between receiving the APTC available for coverage obtained through the Exchange and receiving CHIP coverage. Individuals who are eligible for CHIP are not eligible for APTCs although, individuals who are eligible for CHIP may choose to enroll into a QHP in an Exchange without an APTC. We also note that there are several ways that States can promote the ability of families to enroll in the same plan. States may contract with the same plans that participate as QHPs in the Exchange to deliver covered services in their CHIP programs. States also may offer CHIP eligible individuals the choice of receiving premium assistance through a QHP offered in the Exchange consistent with the standards and requirements of section 2105(c)(3) of the Act. Guidance about the use of premium assistance and coordination of coverage with QHPs in Exchanges is forthcoming.

Comment: We received comments about our proposal for CHIP to adopt the coverage month policy proposed in 45 CFR 155.410 of the Exchange proposed rule, which mirrored comments related to coverage months in Medicaid. Some commenters offered specific recommendations regarding our proposal to update the definition of the effective date of coverage in CHIP in § 457.340(f) to promote better coordination across insurance affordability programs. One commenter recommended that we explicitly require

that the application date be the effective date of coverage, rather than retain flexibility for States. One commenter recommended that we delete the word ''unnecessary'' from § 457.340(f) and § 457.80(c), and add additional clarifying language to emphasize that gaps in eligibility or coverage are not permissible. This commenter also wanted CMS to clarify that in addition to eligibility, CHIP coverage must be furnished promptly.

Response: Our responses to general comments on coverage month for Medicaid also apply to CHIP. See section III.G of this preamble. We encourage CHIP programs to continue to use existing flexibility to continue coverage until the end of the month to reduce gaps in coverage, but we are not requiring a specific approach at this time.

We note that some States use this flexibility to minimize gaps in coverage in different ways. For example, some States retroactively enroll children to the beginning of the month of application. The phrase ''furnish CHIP promptly'' in § 457.348 refers to both CHIP eligibility and CHIP benefits.

Comment: One commenter raised several concerns related to coverage of pregnant women and deemed newborns covered in CHIP. First, the commenter requested that CMS clarify that part 457 applies in full when CHIP services are received by a pregnant women through the CHIP State plan or a waiver of the plan. The commenter also expressed concern that the deletion of existing § 457.350(b)(2) could create problems for determining eligibility for families with deemed newborns. Lastly, the commenter recommended that § 457.343 be modified to require that States routinely renew eligibility near the expected delivery date of a pregnant woman to avoid gaps in coverage, or retroactive disenrollment, particularly for pregnant women eligible for CHIP coverage under the prenatal expansion option.

Response: The option to provide CHIP to pregnant women under the CHIP State plan or waiver of the State plan is beyond the scope of this rule. However, we direct readers to our May 11, 2009 State Health Official Letter, available at *http://www.cms.gov/SMDL/downloads/SHO051109.pdf,* for guidance on this issue.

The specific screening objectives identified in existing regulations at § 457.350(b) are encompassed in the broader screening objectives reflected in § 457.340(b) of this final rule, which direct CHIP agencies to conduct broader screening for potential Medicaid eligibility both based on the applicable MAGI standard for children, pregnant women, parents, and other non-elderly adults as well as on other bases. Deemed newborn eligibility for babies born to mothers eligible for CHIP will be addressed in future guidance.

Finally, as suggested, we would expect States to routinely renew eligibility near the expected delivery date of a pregnant women based on the standard in § 435.916(d)(2), as cross referenced to CHIP at § 457.343, which requires States to renew eligibility at the appropriate time if the agency has information about anticipated changes in an enrollee's circumstances that may affect her eligibility.

Comment: We received several general comments about verification of eligibility for CHIP that mirrored comments received on the verification process in Medicaid, such as concerns about the ability to access data through the electronic service established by the Secretary, requests for clarification regarding the time period to furnish documentation, and questions regarding the use of alternative data sources.

Many commenters expressed strong support for our proposed policy to allow States to accept self-attestation of most eligibility information, and some commenters recommended that we require all States to accept self-attestation of income. One commenter recommended that the CHIP regulation text regarding self-attestation be more closely aligned with proposed § 435.945(b). Other commenters wanted CMS to clarify that self-attestation of pregnancy was acceptable. One commenter requested that CMS clarify whether it was necessary for States to accept self-attested data if subsequent third-party data contradicted the applicant's statement.

We also received some comments about § 457.380(h), regarding the interaction between our verification policies and program integrity requirements. Some commenters indicated that this paragraph was unnecessary and other commenters thought that this policy could have adverse consequences for enrollees.

Response: Our responses to general comments on verification for Medicaid also apply to CHIP. See section III.H of this preamble. Changes that have been made to the Medicaid standards in the final rule generally apply to CHIP via cross-reference, but we have also updated CHIP language where appropriate to ensure alignment. Specifically, we have revised the language of § 457.380(e) to remove the requirement to accept self-attestation of household size, consistent with revisions to the Medicaid regulations at § 435.956; we have cross-referenced paragraph (f) to § 435.952 to ensure an alignment of standards between Medicaid and CHIP; and we have added paragraph (j) to § 457.380 to require States to develop a verification plan similar to the verification plan required by Medicaid agencies in § 435.945(j).

We are modifying our regulation text to mirror Medicaid to further ensure consistency. The acceptance of self-attestation is an option for States (unless not permitted by law), with the one exception that States must accept self-attestation of pregnancy for purposes of Medicaid and CHIP eligibility unless the State has information that is not reasonably compatible with the attestation.

As discussed in section III.H of this preamble, we will be reviewing and analyzing all of our error rate measurement program rules and procedures to ensure consistency with the streamlined eligibility and enrollment rules established in this regulation, and will provide additional guidance as needed. We are revising § 457.380(h) to reflect the changes made to proposed § 435.945(a) (moved to § 435.940 in this final rule) and will work with States to ensure that program integrity policies at the Federal and State levels support the goals of minimizing consumer and State administrative burden while also ensuring accurate eligibility determinations.

Comment: We received several comments expressing concern that the Department of Treasury's proposed rules for the premium tax credit could adversely affect families with children in CHIP. These commenters noted that Treasury's definition of affordable employer-based coverage, in which the affordability test for the entire family would be determined based on the premium cost for self-only coverage for the primary taxpayer, would result in many families not qualifying for premium tax credits. Also, commenters noted that the Treasury's rules for calculating the premium tax credit do not consider the cost of CHIP premiums and would consequently impose an additional premium burden on families that are split between CHIP and the Exchange. Some commenters recommended that if the Department of Treasury does not modify its proposed rule, then CMS should require States to waive CHIP premiums for children whose parents are enrolled in the Exchange or take other measures to minimize the financial burden placed on families with children in CHIP.

Response: Under the existing CHIP statute and regulations, States may vary

premiums for different groups of children and may elect not to impose premiums for children who have parents that are enrolled in the Exchange, consistent with § 457.530, and we encourage States to consider the impact of all premiums paid by the family in designing their CHIP premium policies. However, consistent with the flexibility accorded States under the Act, we are not requiring this approach. Rules relating to the calculation of the premium tax credit are beyond the scope of this rule, but will be discussed in the final rule to be promulgated by the Department of the Treasury.

Comment: Several commenters noted a variety of CHIP specific issues that were not addressed in this regulation, such as the policy for waiting periods, maintenance of effort requirements, essential health benefits, the increase in the CHIP FMAP in 2014, and the possibility for future expansions in CHIP coverage after 2014.

Response: These comments are outside the scope of this rule, but we will consider the comments in future guidance.

O. FMAP for Newly Eligible Individuals and for Expansion States (§ 433.10, § 433.206, § 433.210, and § 433.212)

In the Medicaid Eligibility proposed rule, we proposed to implement section 1905(y) of the Act that provides for a significant increase in the Federal Medical Assistance Percentage (FMAP) for medical expenditures for individuals determined eligible under the new adult group in the State and who will be considered to be ''newly eligible'' in 2014, as defined in section 1905(y)(2)(A) of the Act. Specifically, we proposed to add new provisions for the ''Rates of FFP for program services'' to indicate the increases to the FMAPs as available to States under the Affordable Care Act. We also proposed that States may elect one of three options as a methodology for calculating the newly eligible FMAP:

(1) 2009 Eligibility Standard Threshold.

(2) Statistically Valid Sampling Methodology (§ 433.210).

(3) Use of a FMAP Methodology Based on Reliable Data Sources (§ 433.212).

These and other proposed provisions are discussed in more detail in the Medicaid Eligibility proposed rule (76 FR 51172 through 51178). We received a number of comments concerning the proposed FMAP methodologies for newly eligible individuals and for expansion States provisions.

We are in the process of performing additional research on this topic and are working with States to better understand which approaches will ensure an accurate method for implementing the FMAP and further the simplification goals of the Affordable Care Act. Given that this work is continuing, we will finalize the FMAP methodology for newly eligibles in future rulemaking.

IV. Provisions of the Final Regulations

This final rule incorporates many of the provisions set forth in the Medicaid Eligibility proposed rule. The provisions of this final rule that substantively differ from the Medicaid Eligibility proposed rule are as follows:

A. Revised § 435.4 as follows:

- Revised the definition of the following terms: ''advance payment of the premium tax credit (APTC),'' ''Affordable Insurance Exchanges (Exchanges),'' ''agency,'' and ''tax dependent.''
- Added the definition of the following terms: ''Affordable Care Act,'' ''applicable modified adjusted gross income (MAGI) standard,'' ''applicant,'' ''application,'' ''beneficiary,'' ''eligibility determination,'' ''family size,'' ''Federal Poverty Level (FPL),'' ''non-applicant,'' and ''shared eligibility service.''
- Revised the definition of ''caretaker relative'' to specify the degree of relationship to the dependent child, for consistency with section 406(a) of the Act as in effect prior to enactment of the PRWORA and to provide the option for States to consider other relatives to be caretaker relatives.
- Revised the definition of ''caretaker relative'' to provide the option for States to include the domestic partner of the parent or other caretaker relative or to include another adult with whom the child is living and who assumes primary responsibility for the dependent child's care.
- Revised the definition of ''dependent child'' to add another reason for a child to be considered deprived of parental support. Clarified which 18 year old, full-time students are included under this definition, for consistency with the definition of ''dependent child'' in section 406(a) of the Act as in effect prior to passage of PRWORA, and clarified that it is a State option rather than a requirement to consider 18 year old full-time students as dependent children.

B. Other Revisions

- Revised § 431.10 to allow the Medicaid agency to delegate eligibility determinations to an Exchange (whether operated by a public authority, non-governmental entity or private contractor) or to a private entity, for MAGI populations and strengthens safeguards that the single State agency must have in place when it delegates or contracts eligibility.
- Clarified in § 431.10 certain terms for agreements with delegees/contractors. Adds a requirement that the Medicaid agreements with delegees and/or with its private contractors be available to the public upon request.
- Revised language at § 431.300(b) to clarify that non-applicant information is protected under confidentiality rules, just as information concerning applicants and beneficiaries is protected.
- Removed subparts A and E from part 433–State Fiscal Administration, ''FMAP for Newly Eligible Individuals and for Expansion States (§ 433.10, § 433.206, § 433.210, and § 433.212)'' from the final rule. These issues will be addressed in future rulemaking.
- Revised the description of pregnancy-related services at § 435.116(d)(3) by referencing § 440.210(a)(2), which defines the requirements for coverage of pregnancy-related services.
- Revised § 435.218(b)(1)(iii) to clarify that an individual is not eligible under this optional group if the individual is eligible and enrolled for optional coverage under sections 1902(a)(10)(A)(ii)(I) through (XIX) of the Act.
- Revised § 435.403 to confirm that an individual must be living in the State to be eligible for Medicaid and to clarify that State residency for individuals who receive State supplementary payments or title IV–E assistance are addressed in paragraphs (f) and (g) of this section, respectively.
- Revised § 435.603 (and § 435.911) regarding how MAGI rules apply to individuals with disabilities and those needing long-term services and supports to enable them to enroll under an optional Medicaid eligibility group which better meets their needs if they meet eligibility requirements.
- Revised § 435.603(a)(3) to clarify that MAGI does not apply to beneficiaries eligible and enrolled for Medicaid on or before December 31, 2013 until the later of March 31, 2014 or the next regularly-scheduled renewal.
- Revised § 435.603(b) to specify that the family size for pregnant women includes the woman plus the number of children she is expecting and that the family size of other individuals when a pregnant women is included in their household counts the pregnant woman, at State option, as either one or two person(s) or as herself plus the number of children she is expected to deliver.

• Revised § 435.603(d)(2) to add a heading for this paragraph of ''Income of children and tax dependents'' and to add paragraphs (i) and (ii) with revised policy for consideration of income of children and tax dependents who are not expected to be required to file a tax return and are included in the household of the individual's parent or a taxpayer other than the individual's parent or spouse. Also revised the language to replace ''is not required'' with ''is not expected to require'' to file a tax return for the taxable year in which eligibility for Medicaid is determined.

• Revised § 435.603(d)(3) to make counting cash support, exceeding nominal amounts, a State option rather than a requirement for tax dependents receiving such support from a taxpayer other than the individual's parent.

• Revised § 435.603(e)(2) to add awards as a type of income excluded from MAGI-based income, if used for education purposes.

• Revised § 435.603(e)(3) to clarify the types of income received by American Indians and Alaska Natives excluded from MAGI-based income.

• Revised § 435.603(f)(1), (f)(2), and (f)(3) to replace the language ''file'' with ''expects to file'' a tax return and ''claimed as a tax dependent'' with ''expects to claim as a tax dependent'' for the taxable year in which an initial determination or renewal of eligibility is being made.

• Revised § 435.603(f)(2)(ii) to address children who expect to be claimed by one parent as a tax dependent and are living with both parents who do not expect to file a joint tax return, regardless of whether the parents are married.

• Added definition of ''custodial parent'' to § 435.603(f)(2)(iii) to resolve ambiguity of rules for children claimed as a tax dependent by a non-custodial parent in cases involving shared custody. This definition is the same as that used by the IRS for purposes of claiming a child as a qualifying child.

• Revised § 435.603(f)(3)(ii) and (iii) and (f)(3)(ii) and (iii) and added a new (f)(3)(iv) to provide States with the option to include under these policies for children, 19 and 20-year old full-time students living in their parents' household.

• Added new § 435.603(f)(5) relating to household composition to provide that, when tax dependency for purposes of applying 36B rules at the point of application cannot be determined with reasonable certainty, non-filer rules at paragraph (f)(3) are applied.

• Revised § 435.603(h)(2) to clarify that beneficiaries' projected annual household income, if a State elects this option, is determined for the remainder of the current calendar year, not for the full calendar year.

• Revised § 435.603(h)(3) to clarify that a State may also adopt a reasonable method to project a reasonably predictable future increase or decrease in income and/or family size.

• Added a new paragraph (i) to § 435.603 to use 36B financial methodologies and determine an individual Medicaid-eligible if the individual is ineligible for Medicaid using MAGI-based household income and also ineligible for APTC based on MAGI income below 100 percent FPL.

• Renumbered § 435.603(i) as (j), which specifies the eligibility categories for which MAGI-based methods do not apply.

• Revised § 435.603(j)(2) to exempt individuals age 65 or older from application of MAGI-based methods in determinations of eligibility for which age is a condition of eligibility.

• Added language at § 435.905(b) clarifying that information must be provided accessibly and in a timely manner for persons who are limited English proficient and persons who have a disability. We made small modifications to § 435.907, § 435.916, and § 435.1200 to ensure that the application, renewal form, web sites, kiosks, or other information systems will be provided accessibly.

• Removed the requirement for agencies to accept applications via facsimile in § 435.907(a), and signatures via facsimile in § 435.907(g) in favor of acceptance via other commonly available electronic means.

• Revised § 435.907(c)(2)(i) to provide that applications and forms for non-MAGI populations must be submitted to the Secretary and meet the criteria established by the Secretary for such applications and forms, but do not need approval prior to use.

• Added language to § 435.907(d) and § 435.916 to specify that the agency may not require individuals to complete an in-person interview as part of an application or renewal process for an eligibility determination based on MAGI methods.

• Modified language at § 435.907(e) to clarify that a State may only require information that is necessary to make an eligibility determination or that is directly related to the administration of the State plan.

• Revised § 435.910(a) and (h) to clarify the SSN requirement for applicants that individuals who are not eligible for an SSN or do not have one and are only able to be issued an SSN for a non-work purpose, do not need to provide it. Modified § 435.910(f) and (g) to clarify that such an individual would not need an SSN verified, but would need citizenship or immigration status verified, and that the general rule that a State should not delay or deny an otherwise eligible individual for Medicaid, also applies to such individuals.

• Added § 435.912 to specify timeliness standards for making eligibility determinations. The revised regulations at § 435.912 are published as an interim final regulation, and we welcome comments on them.

• In § 435.916, added a provision to generally allow but not require States to adopt renewal simplifications for applicants being determined using financial methods other than MAGI; codified at § 435.916(f) the agency must renew eligibility on the basis of available information for non-MAGI based renewals as well as MAGI-based renewals.

• Added provisions to § 435.916(a)(3)(iii) and § 435.916(f) to clarify that the agency must consider all bases of eligibility in accordance with § 435.911.

• Added language at § 435.916 (d)(1) to clarify that for Medicaid beneficiaries whose financial eligibility is based on MAGI methods when a State receives new information between regular renewals that relates to an eligibility factor, the State may request additional information from the individual only with respect to such factor to determine ongoing eligibility. However, if the State otherwise has access to information needed to recertify all other eligibility criteria, the State may begin a new 12-month renewal period for that individual.

• Clarified at § 435.916(e), that agencies may only ask for information necessary for renewal; also added a provision at § 435.907(e) to apply the limitations related to non-applicants to renewals.

• Added a new paragraph to § 435.945(j) that directs to describe, update, and submit, upon request, verification policies and procedures adopted by the State agency to implement the provisions set forth in § 435.940 through § 435.956.

• Moved the language in § 435.948(a) related to program integrity to § 435.940 and added language that a State must provide for methods of administration that are in the best interest of applicants and beneficiaries and are necessary for the proper and efficient operation of the Medicaid State plan. Redesignated the paragraphs in § 435.945 accordingly.

• Added paragraphs to § 435.952(c)(2) to clarify that paper documentation may

be requested by the State only to the extent electronic data are not available and establishing a data match would not be effective.

• Removed the word ''alone'' from § 435.956(c)(2) to clarify that States cannot rely on immigration status to determine lack of State residency. States may request additional information in accordance with § 435.952 to verify residency if evidence of immigration status gives the State reason to question an individual's residency.

• Removed the requirement in § 435.956(e) that States must accept self-attestation of household size. Moved verification of household size to § 435.956(f) along with age and date of birth, which may be verified in accordance with § 435.945(a), including the option to accept self-attestation, or through other reasonable verification procedures consistent with requirements in § 435.952.

• In § 435.1200(b), added that the agreement between the Medicaid agency and the Exchange must include a clear delineation of the responsibilities of each program to (i) minimize the burden on individuals; (ii) ensure compliance with the other requirements established in paragraphs (d) through (f) of this section, and if applicable paragraph (c); and (iii) ensure prompt determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards established under § 435.912.

• In § 435.1200, specified that if an agency accepts a determination of Medicaid eligibility by another insurance affordability program, the agency must comply with the provisions of § 435.911 to the same extent as if the individual had submitted an application directly to the Medicaid agency and comply with the provision of § 435.10 to ensure it maintains the oversight for the Medicaid program.

• In § 435.1200, added provisions to address cases where an agency makes the final determination of Medicaid eligibility for applications submitted to the Exchange or other insurance affordability programs.

• Modified all relevant CHIP provisions in subpart 457 to align with Medicaid policy changes and final provisions.

• Modified § 457.310 to specify that the scope and applicability of separate CHIP coverage for children who lose Medicaid due to the elimination of income disregards under MAGI.

• Added to § 457.315 to clarify that the MAGI grace period described in § 435.603(a)(3) applies to CHIP.

• At § 457.320, for CHIP, added a definition of residency for a targeted low-income pregnant woman enrolling in CHIP to mirror Medicaid residency definition for adults.

• Clarified at § 457.340 that enrollment assistance for CHIP should be provided at application and renewal. Clarified the SSN requirement with Medicaid regulation at § 435.910.

• At § 457.348, clarified that the State may accept final determinations of CHIP eligibility made by the Exchange and set standards regarding agreements with other insurance affordability programs, consistent with Medicaid.

• At § 457.350, streamlined language regarding screen and enroll standards to promote clarity and better coordination with Medicaid.

• At § 457.380, made changes to CHIP to align with the changes in Medicaid verification, including the standards for a State verification plan.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In light of the magnitude and scope of the Medicaid expansion and the changes in the eligibility determination system required by the Affordable Care Act, and the statutory implementation date of January 1, 2014, it is critical to provide final rules to guide States in making necessary program changes to prepare for implementation. States will need to make changes to their electronic and manual systems, will need to amend their Medicaid State plans, and may need to enact authorizing legislation on the State level. Because of the short time needed to make necessary changes, we find that it would be contrary to the public interest to delay issuance of comprehensive final rules.

In considering the public comments received in response to the Medicaid Eligibility proposed rule, however, we found that the commenters identified options and policies that we did not specifically address in the proposed rule, in the areas of eligibility determination, coordination with the Affordable Insurance Exchanges, and timeliness and performance standards. While the comments indicated that these options and policies were a logical outgrowth of the proposed rule, we are concerned that there could be a perception that we did not provide a full and fair opportunity for public input since the issues were not specifically addressed in the proposed rule. We have thus determined to provide an additional opportunity for public comment by issuing the affected provisions as an interim final rule with opportunity for comment within the context of the overall comprehensive rule. We are adopting this approach because we find that it would be contrary to the public interest to delay issuance of comprehensive final rules in order to issue a new proposed rule to address issues that we may not have specifically addressed in the proposed rule. We believe that the public interest is served by issuing a single consolidated rule instead of issuing a separate proposed rule, to enable readers to see the context and interrelationships in the overall regulatory framework. There will be no adverse effect from this approach because the new requirements will not be effective until January 1, 2014. And there will be a full and fair opportunity prior to the effective date for public comment and any necessary revisions to the interim final provisions. As this approach will provide an equivalent opportunity for public comment, we also believe that issuance of a separate proposed rule is unnecessary.

In sum, in light of the time constraints for States to implement system changes to implement the required Medicaid expansion, we have found that it would be contrary to the public interest to delay the issuance of comprehensive final rules, and to fragment the regulatory framework, to address potential concerns that certain policies or options were not specifically addressed in the Medicaid Eligibility proposed rule. We also have found that issuance of a new proposed rule would be unnecessary in light of the approach we have adopted, which will provide a full and fair opportunity for public comment, and any necessary revisions, prior to the effective date of new regulatory requirements. We are thus instead issuing certain provisions as an interim final rule, and are soliciting comments on the specific issues listed in the ''Comment Date'' section of this final rule.

Therefore, for the reasons stated above, we find good cause to waive the notice of proposed rulemaking and to issue a portion of this final rule as an interim final rule. Certain provisions of this final rule are being issued as

interim final, and we will consider comments that we receive by May 7, 2012.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the Medicaid Eligibility proposed rule, we solicited public comments for 60 days on the information collection requirements (ICRs). No PRA-related comments were received. This final rule implements provisions of the Affordable Care Act that expand access to health coverage through improvements in Medicaid and CHIP; ensure coordination between Medicaid, CHIP, and the new Affordable Insurance Exchanges (which are included in a separate final rule under RIN 0938–AR25); and simplify the enrollment and renewal processes. Although there are short-term burdens associated with implementation of these provisions, over time the Medicaid program will be made substantially easier for States to administer and for individuals to navigate by streamlining Medicaid eligibility, simplifying Medicaid and CHIP eligibility rules for most individuals, and creating a coordinated process that results in a seamless enrollment experience across Medicaid, CHIP, and the new Affordable Insurance Exchanges.

Information collection requirements (ICRs) are outlined below that involve Medicaid and CHIP eligibility determinations and enrollment. We used data from the Bureau of Labor Statistics to derive average costs for all estimates of salary in establishing the information collection requirements. Salary estimates include the cost of fringe benefits, calculated at 35 percent of salary, which is based on the March 2011 Employer Costs for Employee Compensation report by the U.S. Bureau of Labor Statistics.

The following provisions of this final rule will have their PRA implications reviewed under CMS–10398, OMB 0938–1148:

Medicaid and CHIP State Plans: §§ 431.10(c) and (d); 431.11(d); 435.110(b); 435.116(b); 435.118(b); 435.119(b); 435.218(b); 435.403(h) and (i); 435.603(a); 435.908, 435.916, 457.305(a) and (b); 457.310(b); 457.315, 457.320(d); 457.340(f); 457.343; and 457.350.

We will also be addressing items related to the development and adoption of the single streamlined application as well as alternate applications and supplemental forms for the Exchanges, Medicaid and CHIP under a separate PRA package. Provisions of this final rule that will be addressed in that package include, § 435.907, § 435.910, § 457.330; § 457.340. Information collection requests for these sections are under development and there will be a separate opportunity for public notice and comment on these materials once they have been developed.

A. ICRs Regarding Disclosure of Program Information (§§ 435.1200(f) and 457.340(a))

Amendments to § 435.1200(f) for Medicaid and § 457.340(a) for CHIP require Medicaid and CHIP State agencies to disclose program information to the public electronically. These provisions are necessary to ensure that Medicaid and CHIP program information is available on the internet Web site where individuals and families can explore their coverage options and submit an application.

In a review of State Web sites, we found that all 50 States and the District of Columbia currently have Web sites for Medicaid and CHIP and that nearly every State already provides the information specified in this final rule. We also found that all States offer access to their health insurance applications online.

While these provisions are subject to the PRA, we believe that the requirement above is a usual and customary practice under 5 CFR 1320.3(b)(2) and, as such, the burden associated with it is exempt from the PRA. States have always been required to assure that applicants, providers, other interested parties, and the general public have access to information about Medicaid and CHIP eligibility requirements, available Medicaid services, and the rights and responsibilities of applicants and beneficiaries.

B. ICRs Regarding Verification and Verification Plans (§§ 435.945, 435.948, 435.949, 435.952, 435.956, and 457.380)

This final rule includes guidelines for the verification of certain financial and non-financial information to determine Medicaid and CHIP eligibility (for example, income, State residency, and SSNs). These amendments in §§ 435.945, 435.948, 435.949, 435.952, 435.956, and 457.380 are necessary to facilitate the determination of eligibility with minimal paper documentation required from individuals. States will need to analyze current verification procedures to determine the policy and systems modifications that will be needed in order for States to achieve this streamlined verification process.

In § 435.945(j) and § 457.380(j) the agency must develop, and update as modified, a verification plan that describes the verification policies and procedures adopted by the State agency to implement the provisions set forth in § 435.940–§ 435.956 for Medicaid and in § 457.380 for CHIP. The Secretary will prescribe the format and elements of the plan, and such plans must be submitted to the Secretary upon request. These amendments are necessary to facilitate the determination of eligibility with minimal documentation required from individuals.

We estimate 53 Medicaid agencies (the 50 States, District of Columbia, Northern Mariana Islands, and American Samoa) and an additional 43 CHIP agencies (States that have a separate or combination CHIP) will be subject to the provision above, for a total of 96 agencies.

We estimate that it will take each Medicaid and CHIP agency 20 hours to analyze current verification procedures, make policy and systems modifications, and develop, review, and submit the verification plan. For the purpose of the cost burden, we estimate it will take a health policy analyst 17 hours at $43 an hour, and a senior manager 3 hours at $77 an hour, to complete the verification plan. The estimated cost for each agency is $962 ([17 × 43] + [3 × $77]). The total estimated cost is $92,352 (96 × $962). Taking into account the Federal contribution, the total estimated State costs would be $46,176 ($92,352 × 50 percent).

C. ICRs Regarding Periodic Renewal of Medicaid and CHIP Eligibility (§§ 435.916, 457.343 and 457.350)

The final rule sets out the renewal process for individuals whose eligibility is based on MAGI. These provisions are

necessary to facilitate the accurate and efficient renewal of Medicaid and CHIP eligibility.

We estimate 53 Medicaid agencies (the 50 States, District of Columbia, Northern Mariana Islands, and American Samoa) and an additional 43 CHIP agencies (States that have a separate or combination CHIP) will be subject to the provision above, for a total of 96 agencies.

The burden associated with this provision is the time and effort necessary for the State to develop and automate renewal notices and perform the revised recordkeeping related to renewing eligibility. Individuals whose eligibility is based on MAGI would need to provide any additional information for the State to complete a redetermination of eligibility.

Research has indicated that 33–50 percent of people experience a change in circumstance that may impact their eligibility for coverage (Sommers and Rosenbaum, *Health Affairs* 2011). Based on this research we conservatively estimate that of the approximately 51 million individuals enrolled in Medicaid and CHIP whose eligibility will be based on MAGI, half (25.5 million individuals) will have their eligibility renewed using the information already available to the agency.

We estimate that it will take each Medicaid and CHIP agency 16 hours annually to develop, automate and distribute the notice of eligibility determination based on use of existing information. For the purpose of the cost, we estimate it will take a health policy analyst 10 hours, at $43 an hour, and a senior manager 6 hours, at $77 an hour, to complete the notice. The estimated cost for each agency is $892 [(10 × $43) + (6 × $77)]. The total estimated cost burden is $85,632 [96 × $892], and the total annual hour burden is 1,536 hours [(10 + 6) × 96]. Taking into account the Federal contribution, the total estimated State costs would be $42,816 [$85,632 × 50 percent].

The remaining half of the individuals (25.5 million) will need to provide additional information to the State so that their eligibility can be renewed. We estimate that it will take an individual 20 minutes to complete the streamlined renewal process. The total annual hour burden is 8.5 million hours [(20 minutes × 25.5 million individuals)/60 minutes] for 25.5 million individuals. Note that this is shorter than the time taken to complete the renewal process in most States today.

States will keep records of each renewal that is processed in Medicaid and CHIP. The amount of time for recordkeeping will be the same for renewals based on information available to the agency and renewals that require additional information from individuals. In addition, States will have to program and distribute the pre-populated renewal form every year at renewal time. We estimate that it will take the State agency 15 minutes (0.25 hours) at a rate of $25 per hour for the average State eligibility worker to conduct the required record keeping for each of the 51 million renewals. The total estimated annual hour burden is 12,750,000 hours or 132,812.5 hours per agency [12,750,000/96]. At a rate of $25 per hour the total estimated cost for recordkeeping is $318,750,000 [12,750,000 × $25] or $3,320,312.5 per agency [$318,750,000/96]. Taking into account the Federal contribution, the total estimated State share of the costs would be $159,375,000 [$318,750,000 × 50 percent].

D. ICRs Regarding Web Sites (§ 435.1200 and § 457.335)

Sections 435.1200 and 457.335 require Medicaid and separate CHIP agencies to have a Web site that performs the functions described in this rule.

We estimate that 53 Medicaid agencies and an additional 43 CHIP agencies (in States that have a separate or combination CHIP) would be subject to the provisions above. To achieve efficiency, we assume that States will develop only one Web site to perform the required functions. Therefore, we base our estimates on 50 States, the District of Columbia, the Northern Mariana Islands, and American Samoa (53 agencies) and do not include the 43 separate CHIP programs.

The burden associated with this ICR for information disclosure is the time and effort necessary for the State to develop and disclose information on the Web site, develop and automate the required notices, and transmit (report) the application data to the appropriate insurance affordability program.

We know that all States have Web sites and printable applications online and that 19 States have some ability to enable individuals to renew their coverage online. We estimate that it will take each State an average of 320 hours to develop the additional functionality to meet these requirements, including developing an online application, automating the renewal process and adding a health plan selection function. We estimate that it will take a health policy analyst 85 hours (at $43 an hour), a senior manager 50 hours (at $77 an hour), and various network/computer administrators or programmers 185 hours (at $54 an hour) to meet the reporting requirements under this subpart. We estimate the total cost for a State to be $17,495 [(85 × $43) + (50 × $77) + (185 × $54)] for a total estimated burden of $927,235 [53 × $17,495] and a total annual hour burden of 16,960 hours for all 53 entities [(85 + 50 + 185) × 53]. Taking into account the Federal contribution to Medicaid and CHIP systems development and administration efforts, we estimate that the total State share of costs would be $463,618 [$927,235 × 50 percent] at most. We estimate that it will take each State entity 16 hours annually to develop and automate each of the two required notices (32 total hours). For the purpose of the cost, we estimate it will take a health policy analyst 10 hours, at $43 an hour, and a senior manager 6 hours, at $77 an hour, to complete each notice. The estimated cost of two notices for each agency is $1,784 [$892 × 2]. The total estimated cost is $94,552 [$1,784 × 53], and the total annual hour burden is 1,696 hours [16 × 2 × 53] for the notices.

We estimate that it will take network/computer administrators or programmers 150 hours (at $54 an hour) to transmit the application data of ineligible individuals to the appropriate insurance affordability program and meet this information reporting requirement for each State (53). The estimated cost for each agency is $8,100 [150 × $54]. The total estimated cost for 53 States is $429,300 [53 × $8,100], and the total annual hour burden is 7,950 hours [150 × 53]. Taking into account the Federal contribution, the estimated total State share of costs would be $214,650 [$429,300 × 50 percent].

The total estimated cost of the provisions described above is $1,451,087 [$927,235 + $94,552 + $429,300], and the total annual hour burden is 26,606 hours [16,960 + 1,696 + 7,950].

TABLE 1—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)	State share of costs ($)
Medicaid and CHIP State Plan provisions regarding §§ 431.10(c) and (d); 431.11(d); 435.110(b); 435.116(b); 435.118(b); 435.119(b); 435.218(b); 435.403(h) and (i); 435.603(a); 435.908; 435.916; 457.305(a) and (b); 457.310(b); 457.315; 457.320(d); 457.340(f); 457.343; and 457.350 are under development and will be submitted to OMB for review/approval under control number 0938–1148 (CMS–10398).							
§§ 435.907, 457.330, and 457.340(b).	These information collections are currently under development. A separate notice and comment process for information collections required under these sections will be conducted at a later date.						
§§ 435.945, 435.948, 435.956, 457.350, and 457.380.	96	1	20	1,060	962	92,352	46,176
§§ 435.916 and 457.343	96	1	16	1,536	892	85,632	46,816
§§ 435.916 and 457.343	25.5 million	1	.33	8.5 million			
§§ 435.916 and 457.343	96	51 million	.25	12,750,000	3,320,313	318,750,000	159,375,000
§§ 435.1200 and 457.335	53	1	502	26,606	27,379	1,451,087	725,543
Total						320,379,071	160,193,535

Notes: All collections are new therefore the OMB Control Number is omitted from the table.

There are no capital or maintenance costs incurred by the collections, therefore it is omitted from the table. Capital costs resulting from the development or improvement of new electronic systems were addressed in the Federal Funding for Medicaid Eligibility Determination and Enrollment Activities final rule (76 FR 21950).

Labor Cost figures are indicated here on a per Respondent basis.

The 1.4 average responses per agency (that is, Respondent) are based on the total estimated number of agreements divided by the number of respondents. The number of actual agreements will vary by State based on the governance structure of the State's Medicaid, CHIP, and Exchange programs.

We have submitted a copy of this final rule to the OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

VII. Summary of Regulatory Impact Analysis

The summary analysis of benefits and costs included in this final rule is drawn from the detailed Regulatory Impact Analysis (RIA), available at *www.Medicaid.gov/AffordableCareAct/downloads/CMS-2349-F-RegulatoryImpactAnalysis.pdf.*

A. Summary of Comments and Changes

We received no comments on the anticipated effects of the Medicaid Eligibility proposed rule. Overall, the major provisions included in the Medicaid Eligibility proposed rule are maintained in the final rule. The only significant change in this impact statement reflects the enactment of Public Law 112–56, signed into law on November 21, 2011, changing the MAGI definition of income to include all Social Security benefits. Previously, nontaxable Social Security benefits were not included when calculating MAGI for Medicaid eligibility. In addition, this RIA utilizes revised estimates from the CMS Office of the Actuary (OACT). These estimates have been updated with the most recent economic and health care expenditure and enrollment data and projected trends and with further refinements to the methodology.

B. Introduction

The Office of Management and Budget has determined that this rule is ''economically significant'' for the purposes of Executive Order 12866. Therefore, we have prepared an RIA that presents the costs and benefits of this rulemaking.

C. Need for This Regulation

This final rule will implement provisions of the Affordable Care Act related to Medicaid eligibility, enrollment and coordination with the Exchanges, CHIP, and other insurance affordability programs. It also addresses the current complexity of and barriers to enrollment in Medicaid and CHIP which contributes to millions of eligible low-income Americans remaining uninsured.

D. Summary of Costs and Benefits

The RIA uses the estimates of OACT and the estimates prepared by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation. It provides both estimates to illustrate the uncertainty inherent in projections of future Medicaid financial operations. Analysis by OACT indicates that the final rule will result in an estimated additional 24 million newly eligible and currently eligible individuals enrolling in Medicaid by 2016, including approximately 2–3 million individuals with primary health insurance coverage through employer-sponsored plans who would enroll in Medicaid for supplemental coverage.[1] This is the same estimate as was in the regulatory impact analysis of the Medicaid Eligibility proposed rule (August 2011). OACT notes that such estimates are uncertain, since they depend on future economic, demographic, and other factors that cannot be precisely determined in advance. Similarly, the actual behavior of individuals and the actual operation of the new enrollment processes and Exchanges will affect enrollment and costs. The CBO has estimated a net increase of 16 million newly and previously eligible people enrolled in Medicaid and CHIP in 2016 as a result of the new law, less 500,000 to 1 million due to the change in the definition of

[1] OACT's original estimates for the financial impact of the expansion of Medicaid eligibility under the Affordable Care Act are documented in an April 22, 2010 memorandum, ''Estimated Financial Effects of the Patient Protection and Affordable Care Act, as Amended,'' available at *https://www.cms.gov/ActuarialStudies/downloads/PPACA_2010-04-22.pdf.*

MAGI to include Social Security income.[2]

Overall, we do not expect that the conversion to MAGI rules will result in many currently eligible individuals losing eligibility. However, there may be a relatively small number of currently eligible individuals who would no longer be eligible based on the MAGI methodology. For these individuals, there will be a cost of obtaining coverage through Exchanges, but this cost could be mitigated by premium tax credits and cost-sharing reductions. At the same time, the use of the MAGI definition of income may have the effect of increasing Medicaid eligibility for a small number of individuals and families who would not have been previously eligible. We anticipate no substantial net gain or loss in enrollment due to conversion to MAGI rules.

For new enrollees, eligibility for Medicaid will improve access to medical care, resulting in improved health outcomes and greater financial security. Research demonstrates that when uninsured individuals obtain coverage (including Medicaid), the rate at which they obtain needed care increases substantially.[3 4 5] Individuals with insurance coverage are more likely to have regular checkups, recommended health screenings, and a usual source of care to help manage their health.[6] In addition, people with health insurance coverage have less out of pocket costs and are less likely to have unpaid medical bills.[7]

OACT estimates that Federal spending on Medicaid for newly and currently eligible individuals who enroll as a result of the changes made by the Affordable Care Act would increase by a total of $164 billion from FY 2012 through 2016.[8] Reflecting different data, assumptions, and methodology, CBO estimates an increase in Federal spending of $162 billion over the same period of time, less $7.9 billion resulting from the November 2011 legislative changes to the definition of MAGI.[9 10] OACT estimates that State expenditures for individuals, who choose to enroll as a result of changes implemented by the Affordable Care Act, will total approximately $14 billion for FYs 2012 through 2016.[11] (While the increased FMAP for expansion States is not included in this final rule, it is estimated that $9.1 billion will be transferred from the Federal government to the relevant States between FY 2012 and 2016, reducing the net impact of the Medicaid coverage provisions on those States.[12]) These estimates do not consider offsetting savings to States that will result, to a varying degree depending on the State, from this final rule.

This final rule will benefit States and providers by improving the health of their residents and patients, reducing uncompensated care costs, and allowing States to receive FFP on spending for health coverage that currently is paid for with State and local funds. In addition, the simplified Medicaid eligibility policies will, over time, reduce administrative burdens on State Medicaid agencies. An Urban Institute analysis estimates that the costs to States from Medicaid expansion will be more than fully offset by other effects of the legislation, for net savings to States of $92 to $129 billion from 2014 to 2019.[13]

E. Methods of Analysis

OACT prepared its estimate using data on individuals and families, together with their income levels and insured status, from the Current Population Survey and the Medical Expenditure Panel Survey. In addition, OACT made assumptions as to the actions of individuals in response to the new coverage options under the Affordable Care Act and the operations of the new enrollment processes and the Exchanges. The estimated Medicaid coverage and financial effects are particularly sensitive to these latter assumptions. Among those newly-eligible for Medicaid under the expanded eligibility criteria established by the Affordable Care Act, and who would not otherwise have health insurance, OACT assumed that 95 percent would enroll. This assumption, which is significantly higher than current enrollment percentages, reflects OACT's consideration of the experience with health insurance reform in Massachusetts and its expectation that the streamlined enrollment process and enrollment assistance available to people through the Affordable Insurance Exchanges will be very effective in helping eligible individuals and families become enrolled. Researchers have approximated the participation rate assumed by CBO at a much lower level.[14]

F. Regulatory Options Considered

Alternative approaches to implementing the Medicaid eligibility, enrollment and coordination requirements in the Affordable Care Act were considered in developing this final rule. Because the majority of provisions in this rule are statutorily required, we did not have significant flexibility to choose alternative policies. However, based on comments, we did revise the policy regarding the relationship between Medicaid and the Exchange

[2] CBO. Analysis of Major Health Care Legislation Enacted in March 2010. Statement of Douglas W. Elmendorf. March 30, 2011—*http://www.cbo.gov/ftpdocs/121xx/doc12119/03-30-HealthCareLegislation.pdf* The CBO estimates exclude individuals with primary coverage through employer-sponsored plans who enroll in Medicaid for supplemental coverage. See also CBO Cost Estimate. H.R. 2576: A bill to amend the Internal Revenue Code of 1986 to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs. October 14, 2011. *http://cbo.gov/ftpdocs/124xx/doc12484/hr2576.pdf.*

[4] SK Long, *et al.,* ''How Well Does Medicaid Work in Improving Access to Care?'' HSR: Health Services Research 40:1 (February 2005).

[5] Henry J. Kaiser Family Foundation, ''Children's Health—Why Health Insurance Matters.'' Washington, DC: KFF, 2002.

[5] C. Keane, *et al.,* ''The impact of Children's Health Insurance Program by age,'' Pediatrics 104:5 (1999).

[6] Institute of Medicine, *Care without coverage: too little, too late* (National Academies Press, 2002).

[7] Amy Finkelstein, et al, ''The Oregon Health Insurance Experiment: Evidence from the First Year,'' National Bureau of Economic Research Working Paper No. 17190, July 2011.

[8] FY 2013 President's Budget.

[9] CBO. Analysis of the Major Health Care Legislation Enacted in March 2010. Statement of Douglas W. Elmendorf. March 30, 2011—*http://www.cbo.gov/ftpdocs/121xx/doc12119/03-30-HealthCareLegislation.pdf.*

[10] CBO Cost Estimate. H.R. 2576: A bill to amend the Internal Revenue Code to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs. October 14, 2011. *http://cbo.gov/ftpdocs/124xx/doc12484/hr2576.pdf.*

[11] CBO did not publish the impact on States by year, so estimates for a comparable period are not available.

[12] FY 2013 President's Budget. We note that these estimates are dependent upon which States are ultimately determined to be expansion States under the Affordable Care Act.

[13] M. Buettgens et al., ''Consider savings as well as costs: State governments would spend at least $90 billion less with the Affordable Care Act than without it from 2014 to 2019,'' The Urban Institute, July 2011. Available at *www.urban.org/uploadedpdf/412361-consider-savings.pdf.*

[14] CBO's specific take-up assumptions are not available. Researchers at the Urban Institute have approximated the participation rate assumed by CBO. The Kaiser Family Foundation has characterized this assumption as follows: ''These results assume moderate levels of participation similar to current experience among those made newly eligible for coverage and little additional participation among those currently eligible. This scenario assumes 57 percent participation among the newly eligible uninsured and lower participation across other coverage groups.'' J. Holahan and I. Headen, ''Medicaid coverage and spending in health reform: National and State-by-State results for adults at or below 133 percent FPL,'' Kaiser Commission on Medicaid and the Uninsured, May 2010, available online at *http://www.kff.org/healthreform/upload/Medicaid-Coverage-and-Spending-in-Health-Reform-National-and-State-By-State-Results-for-Adults-at-or-Below-133-FPL.pdf.*

give States additional flexibility for eligibility determinations based on MAGI.

G. Accounting Statement

For full documentation and discussion of these estimated costs and benefits, see the detailed RIA, available at *www.Medicaid.gov/AffordableCareAct/downloads/CMS-2349-F-RegulatoryImpactAnalysis.pdf.*

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED NET COSTS, FROM FY 2012 TO FY 2016

(In millions)

Category	Transfers			
	Year dollar	Units discount rate		Period covered
	2012	7%	3%	
Annualized Monetized Transfers from Federal Government to States on Behalf of Beneficiaries.	Primary Estimate	$30,211	$31,705	FYs 2012–2016.
Annualized Monetized Transfers from States on Behalf of Beneficiaries.	Primary Estimate	$2,568	$2,694	FYs 2012–2016.

Source: CMS Office of the Actuary.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 2011, that threshold is approximately $136 million. However, it is important to understand that the UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly costs resulting from (A) imposing enforceable duties on State, local, or Tribal governments, or on the private sector, or (B) increasing the stringency of conditions in, or decreasing the funding of, State, local, or Tribal governments under entitlement programs.

We believe that States can take actions that will largely offset the increased medical assistance spending for newly enrolled persons. Because the net effects are uncertain and the overall costs significant, we have drafted the RIA to meet the requirements for analysis imposed by UMRA, together with the rest of the preamble. The extensive consultation with States we describe later in this analysis was aimed at the requirements of both UMRA and Executive Order 13132 on Federalism.

1. State and Local Governments

Our discussion of the potential expected impact on States is provided in the benefits, costs, and transfers section of the RIA. As noted previously, the Affordable Care Act requires States that participate in the Medicaid program to cover adults with incomes below 133 percent of the Federal poverty level, and provides substantial new Federal support to nearly offset the costs of covering that population.

2. Private Sector and Tribal Governments

We do not believe this final rule will impose any unfunded mandates on the private sector. As we explain in more detail in the Regulatory Flexibility Act analysis, the provisions of the Affordable Care Act implemented by the final rule deal with eligibility and enrollment for the Medicaid and CHIP programs, and as such are directed toward State governments rather than toward the private sector. Since the final rule will impose no mandates on the private sector, we conclude that the cost of any possible unfunded mandates would not meet the threshold amounts discussed previously that would otherwise require an unfunded mandate analysis for the private sector. We also conclude that an unfunded mandate analysis is not needed for Tribal governments since the final rules will not impose mandates on Tribal governments.

I. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities if a final rule will have a significant economic impact on a substantial number of small entities. Few of the entities that meet the definition of a small entity as that term is used in the RFA (for example, small businesses, nonprofit organization, and small governmental jurisdictions with a population of less than 50,000) will be impacted directly by this final rule. Individuals and States are not included in the definition of a small entity. There are some States in which counties or cities share in the costs of Medicaid. OACT has estimated that between FY 2012 and FY 2016 the Federal government will pay about 92 percent of the costs of benefits for new Medicaid enrollees with the States paying the remaining 8 percent. An Urban Institute and Kaiser Family Foundation study estimated that the Federal government will bear between 92 and 95 percent of the overall costs of the new coverage provided as a result of the Affordable Care Act, with the States shouldering the remaining five to eight percent of the costs.[15] To the extent that States require counties to share in these costs, some small jurisdictions could be affected by the requirements of this final rule. However, nothing in this rule will constrain States from making changes to alleviate any adverse effects on small jurisdictions.

Because this final rule is focused on eligibility and enrollment in public programs, it does not contain provisions that would have a significant direct impact on hospitals, and other health care providers that are designated as small entities under the RFA. However, the provisions in this final rule may have a substantial, positive indirect effect on hospitals and other health care providers due to the substantial increase in the prevalence of health coverage among populations who are currently unable to pay for needed health care, leading to lower rates of uncompensated care at hospitals.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604. For

[15] J. Holahan and I. Headen, ''Medicaid coverage and spending in health reform: National and State-by-State results for adults at or below 133 percent FPL,'' Kaiser Commission on Medicaid and the Uninsured, May 2010, available online at *http://www.kff.org/healthreform/upload/Medicaid-Coverage-and-Spending-in-Health-Reform-National-and-State-By-State-Results-for-Adults-at-or-Below-133-FPL.pdf.*

purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this final rule will not have a direct economic impact on the operations of a substantial number of small rural hospitals. As indicated in the preceding discussion, there may be indirect positive effects from reductions in uncompensated care.

J. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct effects on States, preempts State law, or otherwise has Federalism implications. As discussed previously, the Affordable Care Act and this final rule have significant direct effects on States.

The Affordable Care Act requires major changes in the Medicaid and CHIP programs, which will require changes in the way States operate their individual programs. While these changes are intended to benefit beneficiaries and enrollees by improving coordination between programs, they are also designed to reduce the administrative burden on States by simplifying and streamlining systems.

We have received input from States on how the various Affordable Care Act provisions codified in this final rule will affect them. We have participated in a number of conference calls and in person meetings with State officials in the months before and since the law was enacted. These discussions have enabled the States to share their thinking and questions about how the Medicaid changes in the legislation would be implemented. The conference calls and meetings also furnished opportunities for State Medicaid Directors to comment informally on implementation issues and plans (although to be considered comments on the Medicaid Eligibility proposed rule, written comments using the process described in the Medicaid Eligibility proposed rule were required).

We continue to engage in ongoing consultations with Medicaid and CHIP Technical Advisory Groups (TAGs), which have been in place for many years and serve as a staff level policy and technical exchange of information between CMS and the States. In particular, we have had discussions with the Eligibility TAG (E–TAG) and the Children's Coverage TAG. The E–TAG is a group of State Medicaid officials with specific expertise in the field of eligibility policy under the Medicaid program. The Children's Coverage TAG is a combination of Medicaid and CHIP officials that convene to discuss issues that affect children enrolled in those programs. Through meetings with these TAGs, we have been able to get input from States specific to issues surrounding the changes in eligibility groups and rules that will become effective in 2014.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, 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 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 2. Section 431.10 is amended by—

■ A. Adding paragraphs (c)(3), (c)(4), and (c)(5).

■ B. Revising paragraphs (d) and (e)(3).

The revisions and additions read as follows:

§ 431.10 Single State agency.

* * * * *

(c) * * *

(3) The plan must specify whether the entity that determines eligibility is an Exchange established under sections 1311(b)(1) or 1321(c)(1) of the Affordable Care Act (Pub. L. 111–148), provided that if the Exchange is operated as a nongovernmental entity as permitted under 45 CFR 155.110(c), or contracts with a private entity for eligibility services, as permitted under 1311(f)(3) of the Affordable Care Act and 45 CFR 155.110(a), final determinations of eligibility are limited to determinations using MAGI-based methods as set forth in § 435.603 of this subchapter.

(4) The single State agency is responsible for ensuring eligibility determinations are made consistent with its policies, and if there is a pattern of incorrect, inconsistent, or delayed determinations for ensuring that corrective actions are promptly instituted.

(5) The single State agency is responsible for ensuring that eligibility determinations are made in the best interest of applicants and beneficiaries, and specifically ensuring that:

(i) There is no conflict of interest by any entity delegated the responsibility to make eligibility determinations or performing eligibility services; and

(ii) Improper incentives and/or outcomes are prohibited, monitored, and if found, properly and promptly addressed through corrective actions.

(d) *Agreement with Federal or State and local entities.* The plan must provide for agreements between the Medicaid agency and the Federal or other State or local agencies or nongovernmental entities that determine Medicaid eligibility on behalf of the Medicaid agency. Such agreements, which shall be in writing and available upon request, must include provisions for:

(1) The relationships and respective responsibilities of the parties;

(2) The quality control and oversight plans by the single State agency to review determinations made by the delegee or its contractor to ensure that overall determinations are made consistent with the State agencies' eligibility policies;

(3) The reporting requirements from the delegee making Medicaid eligibility determinations to the single State agency to permit such oversight;

(4) An assurance that the delegee and its contractors will comply with the confidentiality and security requirements in accordance with sections 1902(a)(7) and 1942 of the Act and subpart F of this part for all applicant and beneficiary data;

(5) An assurance that merit system personnel protection principles are employed by the entity responsible for the Medicaid eligibility determination and for any contractor performing eligibility services; and

(6) An assurance that applicants and beneficiaries are made aware of how they can directly contact and obtain information from the single State agency.

(e) * * *

(3) If other Federal, State, local agencies or offices or non-governmental entities (including their contractors) perform services for the Medicaid agency, they must not have the

authority to change or disapprove any administrative decision of, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules and regulations issued by the Medicaid agency.

■ 3. Section 431.11 is amended by revising paragraph (d) to read as follows:

§ 431.11 Organization for administration.

* * * * *

(d) *Eligibility determined by other entities.* If eligibility is determined by Federal or State agencies other than the Medicaid agency or by local agencies under the supervision of other State agencies, or by nongovernmental entities, or if eligibility functions are performed by an Exchange contractor, the plan must include a description of the staff designated by those other entities and the functions they perform in carrying out their responsibilities.

■ 4. Section 431.300 is amended by:

■ A. Redesignating paragraph (b) as paragraph (c).

■ B. Adding a new paragraph (b).

■ C. Revising newly designated paragraphs (c) introductory text and (c)(1).

■ D. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 431.300 Basis and purpose.

* * * * *

(b) For purposes of this subpart, information concerning an applicant or beneficiary includes information on a non-applicant, as defined in § 435.4 of this subchapter.

(c) Section 1137 of the Act, which requires agencies to exchange information to verify the income and eligibility of applicants and beneficiaries (see § 435.940 through § 435.965 of this subchapter), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l)(7) of the Internal Revenue Code is exchanged only with agencies authorized to receive that information under that section of the Code; and

* * * * *

(d) Section 1943 of the Act and section 1413 of the Affordable Care Act.

■ 5. Section 431.305 is amended by—

■ A. Revising paragraph (b)(6).

■ B. Adding paragraph (b)(8).

The revisions and addition read as follows:

§ 431.305 Types of information to be safeguarded.

* * * * *

(b) * * *

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940 through § 435.965 of this subchapter). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data, including section 6103 of the Internal Revenue Code, as applicable.

* * * * *

(8) Social Security Numbers.

■ 6. Section 431.306 is amended by revising paragraph (g) to read as follows:

§ 431.306 Release of information.

* * * * *

(g) Before requesting information from, or releasing information to, other agencies to verify income, eligibility and the amount of assistance under § 435.940 through § 435.965 of this subchapter, the agency must execute data exchange agreements with those agencies, as specified in § 435.945(i) of this subchapter.

* * * * *

§ 431.636 [Removed]

■ 7. Remove § 431.636.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 8. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 9a. Remove the term ''family income'' wherever it appears in part 435 and add in its place the term ''household income''.

■ 9b. Section 435.4 is amended by—

■ A. Adding the definitions of ''Advance payments of the premium tax credit (APTC),'' ''Affordable Care Act,'' ''Affordable Insurance Exchanges (Exchanges),'' ''Agency,'' ''Applicable modified adjusted gross income (MAGI) standard,'' ''Applicant,'' ''Application,'' ''Beneficiary,'' ''Caretaker relative,'' ''Dependent child,'' ''Effective income level,'' ''Electronic account,'' ''Eligibility determination,'' ''Family size,'' ''Federal poverty level (FPL),'' ''Household income,'' ''Insurance affordability program,'' ''MAGI-based income,'' ''Minimum essential coverage,'' ''Modified adjusted gross income (MAGI),'' ''Non-applicant,'' ''Pregnant woman,'' ''Secure electronic interface,'' ''Shared eligibility service,'' and ''Tax dependent'' in alphabetical order.

■ B. Removing the definition of ''Families and children.''

The additions read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Advance payments of the premium tax credit (APTC) has the meaning given the term in 45 CFR 155.20.

* * * * *

Affordable Care Act means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112–56).

Affordable Insurance Exchanges (Exchanges) has the meaning given the term ''Exchanges'' in 45 CFR 155.20.

Agency means a single State agency designated or established by a State in accordance with § 431.10(b) of this subchapter.

Applicable modified adjusted gross income (MAGI) standard has the meaning provided in § 435.911(b)(1) of this part.

Applicant means an individual who is seeking an eligibility determination for himself or herself through an application submission or a transfer from another agency or insurance affordability program.

Application means the single streamlined application described at § 435.907(b) of this part or an application described in § 435.907(c)(2) of this part submitted by or on behalf of an individual.

* * * * *

Beneficiary means an individual who has been determined eligible and is currently receiving Medicaid.

Caretaker relative means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes), and who is one of the following—

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative, even after the marriage is terminated by death or divorce.

(3) At State option, another relative of the child based on blood (including those of half-blood), adoption, or marriage; the domestic partner of the

parent or other caretaker relative; or an adult with whom the child is living and who assumes primary responsibility for the dependent child's care.

* * * * *

Dependent child means a child who meets both of the following criteria:

(1) Is under the age of 18, or, at State option, is age 18 and a full-time student in secondary school (or equivalent vocational or technical training), if before attaining age 19 the child may reasonably be expected to complete such school or training.

(2) Is deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent, unless the State has elected in its State plan to eliminate such deprivation requirement. A parent is considered to be unemployed if he or she is working less than 100 hours per month, or such higher number of hours as the State may elect in its State plan.

Effective income level means the income standard applicable under the State plan for an eligibility group, after taking into consideration any disregard of a block of income applied in determining financial eligibility for such group.

Electronic account means an electronic file that includes all information collected and generated by the State regarding each individual's Medicaid eligibility and enrollment, including all documentation required under § 435.914 of this part.

Eligibility determination means an approval or denial of eligibility in accordance with § 435.911 as well as a renewal or termination of eligibility in accordance with § 435.916 of this part.

Family size has the meaning provided in § 435.603(b) of this part.

Federal poverty level (FPL) means the Federal poverty level updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as in effect for the applicable budget period used to determine an individual's eligibility in accordance with § 435.603(h) of this part.

Household income has the meaning provided in § 435.603(d) of this part.

Insurance affordability program means a program that is one of the following:

(1) A State Medicaid program under title XIX of the Act.

(2) A State children's health insurance program (CHIP) under title XXI of the Act.

(3) A State basic health program established under section 1331 of the Affordable Care Act.

(4) A program that makes coverage in a qualified health plan through the Exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals.

(5) A program that makes available coverage in a qualified health plan through the Exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

MAGI-based income has the meaning provided in § 435.603(e) of this part.

* * * * *

Minimum essential coverage means coverage defined in section 5000A(f) of subtitle D of the Internal Revenue Code, as added by section 1401 of the Affordable Care Act, and implementing regulations of such section issued by the Secretary of the Treasury.

Modified adjusted gross income (MAGI) has the meaning provided at 26 CFR 1.36B–1(e)(2).

Non-applicant means an individual who is not seeking an eligibility determination for himself or herself and is included in an applicant's or beneficiary's household to determine eligibility for such applicant or beneficiary.

* * * * *

Pregnant woman means a woman during pregnancy and the post partum period, which begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60-day period ends.

Secure electronic interface means an interface which allows for the exchange of data between Medicaid and other insurance affordability programs and adheres to the requirements in part 433, subpart C of this chapter.

Shared eligibility service means a common or shared eligibility system or service used by a State to determine individuals' eligibility for insurance affordability programs.

* * * * *

Tax dependent has the same meaning as the term ''dependent'' under section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Code for a taxable year.

Subpart B—Mandatory Coverage

■ 10. The heading for subpart B is revised as set forth above.

■ 11. Section 435.110 is revised to read as follows:

§ 435.110 Parents and other caretaker relatives.

(a) *Basis.* This section implements sections 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to parents and other caretaker relatives, as defined in § 435.4, and, if living with such parent or other caretaker relative, his or her spouse, whose household income is at or below the income standard established by the agency in the State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.* The agency must establish in its State plan the income standard as follows:

(1) The minimum income standard is a State's AFDC income standard in effect as of May 1, 1988 for the applicable family size.

(2) The maximum income standard is the higher of—

(i) The effective income level in effect for section 1931 low-income families under the Medicaid State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(ii) A State's AFDC income standard in effect as of July 16, 1996 for the applicable family size, increased by no more than the percentage increase in the Consumer Price Index for all urban consumers between July 16, 1996 and the effective date of such increase.

■ 12. Revise the undesignated center heading that is immediately before § 435.116 to read as follows:

Mandatory Coverage of Pregnant Women, Children Under 19, and Newborn Children

■ 13. Section 435.116 is revised to read as follows:

§ 435.116 Pregnant women.

(a) *Basis.* This section implements sections 1902(a)(10)(A)(i)(III) and (IV); 1902(a)(10)(A)(ii)(I), (IV), and (IX); and 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to pregnant women whose household income is at or below the income standard established by the agency in its State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.* The agency must establish in its State plan the income standard as follows:

(1) The minimum income standard is the higher of:

(i) 133 percent FPL for the applicable family size; or

(ii) Such higher income standard up to 185 percent FPL, if any, as the State had established as of December 19, 1989

for determining eligibility for pregnant women, or, as of July 1, 1989, had authorizing legislation to do so.

(2) The maximum income standard is the higher of—

(i) The highest effective income level in effect under the Medicaid State plan for coverage under the sections specified at paragraph (a) of this section, or waiver of the State plan covering pregnant women, as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(ii) 185 percent FPL.

(d) *Covered services.* (1) Pregnant women are covered under this section for the full Medicaid coverage described in paragraph (d)(2) of this section, except that the agency may provide only pregnancy-related services described in paragraph (d)(3) of this section for pregnant women whose income exceeds the applicable income limit established by the agency in its State plan, in accordance with paragraph (d)(4) of this section.

(2) Full Medicaid coverage consists of all services which the State is required to cover under § 440.210(a)(1) of this subchapter and all services which it has opted to cover under § 440.225 and § 440.250(p) of this subchapter.

(3) Pregnancy-related services consists of services covered under the State plan consistent with § 440.210(a)(2) and § 440.250(p) of this subchapter.

(4) *Applicable income limit for full Medicaid coverage of pregnant women.* For purposes of paragraph (d)(1) of this section—

(i) The minimum applicable income limit is the State's AFDC income standard in effect as of May 1, 1988 for the applicable family size.

(ii) The maximum applicable income limit is the highest effective income level for coverage under section 1902(a)(10)(A)(i)(III) of the Act or under section 1931(b) and (d) of the Act in effect under the Medicaid State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard.

■ 14. Section 435.118 is added to read as follows:

§ 435.118 Infants and children under age 19.

(a) *Basis.* This section implements sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII); 1902(a)(10)(A)(ii)(IV) and (IX); and 1931(b) and (d) of the Act.

(b) *Scope.* The agency must provide Medicaid to children under age 19 whose household income is at or below the income standard established by the agency in its State plan, in accordance with paragraph (c) of this section.

(c) *Income standard.* (1) The minimum income standard is the higher of—

(i) 133 percent FPL for the applicable family size; or

(ii) For infants under age 1, such higher income standard up to 185 percent FPL, if any, as the State had established as of December 19, 1989 for determining eligibility for infants, or, as of July 1, 1989 had authorizing legislation to do so.

(2) The maximum income standard for each of the age groups of infants under age 1, children age 1 through age 5, and children age 6 through age 18 is the higher of—

(i) 133 percent FPL;

(ii) The highest effective income level for each age group in effect under the Medicaid State plan for coverage under the applicable sections of the Act listed at paragraph (a) of this section or waiver of the State plan covering such age group as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or

(iii) For infants under age 1, 185 percent FPL.

■ 15. Revise the undesignated center heading that is before § 435.119 to read as follows:

Mandatory Coverage for Individuals Age 19 Through 64

■ 16. Section 435.119 is revised to read as follows:

§ 435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL.

(a) *Basis.* This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.

(b) *Eligibility.* The agency must provide Medicaid to individuals who:

(1) Are age 19 or older and under age 65;

(2) Are not pregnant;

(3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;

(4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and

(5) Have household income that is at or below 133 percent FPL for the applicable family size.

(c) *Coverage for dependent children.* (1) A State may not provide Medicaid under this section to a parent or other caretaker relative living with a dependent child if the child is under the age specified in paragraph (c)(2) of this section, unless such child is receiving benefits under Medicaid, the Children's Health Insurance Program under subchapter D of this chapter, or otherwise is enrolled in minimum essential coverage as defined in § 435.4 of this part.

(2) For the purpose of paragraph (c)(1) of this section, the age specified is under age 19, unless the State had elected as of March 23, 2010 to provide Medicaid to individuals under age 20 or 21 under § 435.222 of this part, in which case the age specified is such higher age.

Subpart C—Options for Coverage

■ 17. The heading for subpart C is revised to read as set forth above.

■ 18. Section 435.218 is added to read as follows:

§ 435.218 Individuals with MAGI-based income above 133 percent FPL.

(a) *Basis.* This section implements section 1902(a)(10)(A)(ii)(XX) of the Act.

(b) *Eligibility*—(1) *Criteria.* The agency may provide Medicaid to individuals who:

(i) Are under age 65;

(ii) Are not eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part;

(iii) Are not otherwise eligible for and enrolled for optional coverage under a State's Medicaid State plan in accordance with section 1902(a)(10)(A)(ii)(I) through (XIX) of the Act and subpart C of this part, based on information available to the State from the application filed by or on behalf of the individual; and

(iv) Have household income that exceeds 133 percent FPL but is at or below the income standard elected by the agency and approved in its Medicaid State plan, for the applicable family size.

(2) *Limitations.* (i) A State may not, except as permitted under an approved phase-in plan adopted in accordance with paragraph (b)(3) of this section, provide Medicaid to higher income individuals described in paragraph (b)(1) of this section without providing Medicaid to lower income individuals described in such paragraph.

(ii) The limitation on eligibility of parents and other caretaker relatives specified in § 435.119(c) of this section also applies to eligibility under this section.

(3) *Phase-in plan.* A State may phase in coverage to all individuals described in paragraph (b)(1) of this section under a phase-in plan submitted in a State

plan amendment to and approved by the Secretary.

■ 19. Section 435.403 is amended by—

■ A. Redesignating paragraphs (h) and (i) as paragraphs (i) and (h), respectively.

■ B. Adding introductory text for newly redesignated paragraphs (h) and (i).

■ C. Further redesignating newly redesignated paragraphs (h)(2), (h)(3), and (h)(4) as paragraphs (h)(3), (h)(4), and (h)(5), respectively.

■ D. Adding new paragraph (h)(2).

■ E. Revising newly redesignated paragraphs (h)(1) and (h)(5).

■ F. Revising newly redesignated paragraphs (i)(1) and (i)(2).

■ G. Removing newly redesignated paragraph (i)(3).

■ H. Further redesignating newly redesignated paragraph (i)(4) as paragraph (i)(3).

■ I. Amending paragraph (l)(2) by removing the phrase ''paragraph (h)'' and adding the phrase ''paragraph (i)'' in its place.

The revisions and addition read as follows:

§ 435.403 State residence.

* * * * *

(h) *Individuals age 21 and over.* Except as provided in paragraph (f) of this section, with respect to individuals age 21 and over —

(1) For an individual not residing in an institution as defined in paragraph (b) of this section, the State of residence is the State where the individual is living and—

(i) Intends to reside, including without a fixed address; or

(ii) Has entered the State with a job commitment or seeking employment (whether or not currently employed).

(2) For an individual not residing in an institution as defined in paragraph (b) of this section who is not capable of stating intent, the State of residency is the State where the individual is living.

* * * * *

(5) For any other institutionalized individual, the State of residence is the State where the individual is living and intends to reside.

(i) *Individuals under age 21.* For an individual under age 21 who is not eligible for Medicaid based on receipt of assistance under title IV–E of the Act, as addressed in paragraph (g) of this section, and is not receiving a State supplementary payment, as addressed in paragraph (f) of this section, the State of residence is as follows:

(1) For an individual who is capable of indicating intent and who is emancipated from his or her parent or who is married, the State of residence is determined in accordance with paragraph (h)(1) of this section.

(2) For an individual not described in paragraph (i)(1) of this section, not living in an institution as defined in paragraph (b) of this section and not eligible for Medicaid based on receipt of assistance under title IV–E of the Act, as addressed in paragraph (g) of this section, and is not receiving a State supplementary payment, as addressed in paragraph (f) of this section, the State of residence is:

(i) The State where the individual resides, including without a fixed address; or

(ii) The State of residency of the parent or caretaker, in accordance with paragraph (h)(1) of this section, with whom the individual resides.

* * * * *

§ 435.407 [Amended]

■ 20. Amend § 435.407(k) by removing the reference ''and 435.911'' and adding in its place the reference ''and 435.912''.

§ 435.541 [Amended]

■ 21. Amend § 435.541(a)(2) by removing the reference ''§ 435.911'' and adding in its place the reference ''§ 435.912''.

■ 22. Section 435.603 is added to read as follows:

§ 435.603 Application of modified adjusted gross income (MAGI).

(a) *Basis, scope, and implementation.* (1) This section implements section 1902(e)(14) of the Act.

(2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.

(3) In the case of determining ongoing eligibility for beneficiaries determined eligible for Medicaid coverage to begin on or before December 31, 2013, application of the financial methodologies set forth in this section will not be applied until March 31, 2014 or the next regularly-scheduled renewal of eligibility for such individual under § 435.916 of this part, whichever is later.

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

Code means the Internal Revenue Code.

Family size means the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted, at State option, as either 1 or 2 person(s) or as herself plus the number of children she is expected to deliver.

Tax dependent has the meaning provided in § 435.4 of this part.

(c) *Basic rule.* Except as specified in paragraph (i) and (j) of this section, the agency must determine financial eligibility for Medicaid based on ''household income'' as defined in paragraph (d) of this section.

(d) *Household income*—(1) *General rule.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household, minus an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size.

(2) *Income of children and tax dependents.* (i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(ii) The MAGI-based income of a tax dependent described in paragraph (f)(2)(i) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

(3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income may, at State option, also include actually available cash support, exceeding nominal amounts, provided by the person claiming such individual as a tax dependent.

(e) *MAGI-based income.* For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code, with the following exceptions—

(1) An amount received as a lump sum is counted as income only in the month received.

(2) Scholarships, awards, or fellowship grants used for education

purposes and not for living expenses are excluded from income.

(3) *American Indian/Alaska Native exceptions.* The following are excluded from income:

(i) Distributions from Alaska Native Corporations and Settlement Trusts;

(ii) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;

(iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from—

(A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii) of this section; or

(B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(iv) Distributions resulting from real property ownership interests related to natural resources and improvements—

(A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or

(B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;

(v) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;

(vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(f) *Household*—(1) *Basic rule for taxpayers not claimed as a tax dependent.* In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent.

(2) *Basic rule for individuals claimed as a tax dependent.* In the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent, except that the household must be determined in accordance with paragraph (f)(3) of this section in the case of—

(i) Individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer;

(ii) Individuals under the age specified by the State under paragraph (f)(3)(iv) of this section who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) Individuals under the age specified by the State under paragraph (f)(3)(iv) of this section who expect to be claimed as a tax dependent by a non-custodial parent. For purposes of this section—

(A) A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or

(B) If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

(3) *Rules for individuals who neither file a tax return nor are claimed as a tax dependent.* In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and

(iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.

(iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—

(A) Age 19; or

(B) Age 19 or, in the case of full-time students, age 21.

(4) *Married couples.* In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return under section 6013 of the Code or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(5) For purposes of paragraph (f)(1) of this section, if, consistent with the procedures adopted by the State in accordance with § 435.956(f) of this part, a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of such individual in the household of the taxpayer is determined in accordance with paragraph (f)(3) of this section.

(g) *No resource test or income disregards.* In the case of individuals whose financial eligibility for Medicaid is determined in accordance with this section, the agency must not—

(1) Apply any assets or resources test; or

(2) Apply any income or expense disregards under sections 1902(r)(2) or 1931(b)(2)(C), or otherwise under title XIX of the Act, except as provided in paragraph (d)(1) of this section.

(h) *Budget period*—(1) *Applicants and new enrollees.* Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size.

(2) *Current beneficiaries.* For individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year.

(3) In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. Such future increase or decrease in income or family size must be verified in the same manner as other income and eligibility factors, in accordance with the income and eligibility verification requirements at § 435.940 through § 435.965, including by self-attestation if reasonably compatible with other electronic data obtained by the agency in accordance with such sections.

(i) If the household income of an individual determined in accordance with this section results in financial ineligibility for Medicaid and the

household income of such individual determined in accordance with 26 CFR 1.36B–1(e) is below 100 percent FPL, Medicaid financial eligibility will be determined in accordance with 26 CFR 1.36B–1(e).

(j) *Eligibility Groups for which MAGI-based methods do not apply.* The financial methodologies described in this section are not applied in determining the Medicaid eligibility of individuals described in this paragraph. The agency must use the financial methods described in § 435.601 and § 435.602 of this subpart.

(1) Individuals whose eligibility for Medicaid does not require a determination of income by the agency, including, but not limited to, individuals receiving Supplemental Security Income (SSI) eligible for Medicaid under § 435.120 of this part, individuals deemed to be receiving SSI and eligible for Medicaid under § 435.135, § 435.137 or § 435.138 of this part and individuals for whom the State relies on a finding of income made by an Express Lane agency, in accordance with section 1902(e)(13) of the Act.

(2) Individuals who are age 65 or older when age is a condition of eligibility.

(3) Individuals whose eligibility is being determined on the basis of being blind or disabled, or on the basis of being treated as being blind or disabled, including, but not limited to, individuals eligible under § 435.121, § 435.232 or § 435.234 of this part or under section 1902(e)(3) of the Act, but only for the purpose of determining eligibility on such basis.

(4) Individuals who request coverage for long-term services and supports for the purpose of being evaluated for an eligibility group under which long-term services and supports are covered. ''Long-term services and supports'' include nursing facility services, a level of care in any institution equivalent to nursing facility services; home and community-based services furnished under a waiver or State plan under sections 1915 or 1115 of the Act; home health services as described in sections 1905(a)(7) of the Act and personal care services described in sections 1905(a)(24) of the Act.

(5) Individuals who are being evaluated for eligibility for Medicare cost sharing assistance under section 1902(a)(10)(E) of the Act, but only for purposes of determining eligibility for such assistance.

(6) Individuals who are being evaluated for coverage as medically needy under subparts D and I of this part, but only for the purpose of determining eligibility on such basis.

§ 435.831 [Amended]

■ 23. Amend § 435.831(a)(2) by removing the reference ''§ 435.914'' and adding in its place the reference ''§ 435.915''.

■ 24. Section 435.905 is revised to read as follows:

§ 435.905 Availability of program information.

(a) The agency must furnish the following information in electronic and paper formats (including through the Internet Web site described in § 435.1200(f) of this part), and orally as appropriate, to all applicants and other individuals who request it:

(1) The eligibility requirements;

(2) Available Medicaid services; and

(3) The rights and responsibilities of applicants and beneficiaries.

(b) Such information must be provided to applicants and beneficiaries in plain language and in a manner that is accessible and timely to—

(1) Individuals who are limited English proficient through the provision of language services at no cost to the individual; and

(2) Individuals living with disabilities through the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

■ 25. Section 435.907 is revised to read as follows:

§ 435.907 Application.

(a) *Basis and implementation.* In accordance with section 1413(b)(1)(A) of the Affordable Care Act, the agency must accept an application from the applicant, an adult who is in the applicant's household, as defined in § 435.603(f), or family, as defined in section 36B(d)(1) of the Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility—

(1) Via the internet Web site described in § 435.1200(f) of this part;

(2) By telephone;

(3) Via mail;

(4) In person; and

(5) Through other commonly available electronic means.

(b) The application must be—

(1) The single, streamlined application for all insurance affordability programs developed by the Secretary; or

(2) An alternative single, streamlined application for all insurance affordability programs, which may be no more burdensome on the applicant than the application described in paragraph (b)(1) of this section, approved by the Secretary.

(c) For individuals applying, or who may be eligible, for assistance on a basis other than the applicable MAGI standard in accordance with § 435.911(c)(2) of this part, the agency may use either—

(1) An application described in paragraph (b) of this section and supplemental forms to collect additional information needed to determine eligibility on such other basis; or

(2) An application designed specifically to determine eligibility on a basis other than the applicable MAGI standard. Such application must minimize burden on applicants.

(3) Any MAGI-exempt applications and supplemental forms in use by the agency must be submitted to the Secretary.

(d) The agency may not require an in-person interview as part of the application process for a determination of eligibility using MAGI-based income.

(e) *Limits on information.* (1) The agency may only require an applicant to provide the information necessary to make an eligibility determination or for a purpose directly connected to the administration of the State plan.

(2) The agency may request information necessary to determine eligibility for other insurance affordability or benefit programs.

(3) The agency may request a non-applicant's SSN provided that—

(i) Provision of such SSN is voluntary;

(ii) Such SSN is used only to determine an applicant's or beneficiary's eligibility for Medicaid or other insurance affordability program or for a purpose directly connected to the administration of the State plan; and

(iii) At the time such SSN is requested, the agency provides clear notice to the individual seeking assistance, or person acting on such individual's behalf, that provision of the non-applicant's SSN is voluntary and information regarding how the SSN will be used.

(f) The agency must require that all initial applications are signed under penalty of perjury. Electronic, including telephonically recorded, signatures and handwritten signatures transmitted via any other electronic transmission must be accepted.

(g) Any application or supplemental form must be accessible to persons who are limited English proficient and persons who have disabilities, consistent with § 435.905(b) of this subpart.

■ 26. Section 435.908 is revised to read as follows:

§ 435.908 Assistance with application and renewal.

(a) The agency must provide assistance to any individual seeking help with the application or renewal process in person, over the telephone, and online, and in a manner that is accessible to individuals with disabilities and those who are limited English proficient, consistent with § 435.905(b) of this subpart.

(b) The agency must allow individual(s) of the applicant or beneficiary's choice to assist in the application process or during a renewal of eligibility.

■ 27. Section 435.910 is amended by—

■ A. Redesignating paragraphs (h)(2) and (h)(3), as (h)(3) and (h)(4), respectively.

■ B. Adding a new paragraph (h)(2).

■ C. Revising paragraphs (a), (f), (g), and (h)(1) to read as follows:

§ 435.910 Use of Social Security number.

(a) Except as provided in paragraph (h) of this section, the agency must require, as a condition of eligibility, that each individual (including children) seeking Medicaid furnish each of his or her Social Security numbers (SSN).

* * * * *

(f) The agency must not deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN by SSA or if the individual meets one of the exceptions in paragraph (h) of this section.

(g) The agency must verify the SSN furnished by an applicant or beneficiary to insure the SSN was issued to that individual, and to determine whether any other SSNs were issued to that individual.

(h) *Exception.* (1) The requirement of paragraph (a) of this section does not apply and a State may give a Medicaid identification number to an individual who—

(i) Is not eligible to receive an SSN;

(ii) Does not have an SSN and may only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104; or

(iii) Refuses to obtain an SSN because of well-established religious objections.

(2) The identification number may be either an SSN obtained by the State on the applicant's behalf or another unique identifier.

* * * * *

■ 28. Redesignate § 435.911 through § 435.914 as § 435.912 through § 435.915 respectively.

■ 29. Add new § 435.911 to read as follows:

§ 435.911 Determination of eligibility.

(a) *Statutory basis.* This section implements sections 1902(a)(4), (a)(8), (a)(10)(A), (a)(19), and (e)(14) and section 1943 of the Act.

(b)(1) *Applicable modified adjusted gross income standard* means 133 percent of the Federal poverty level or, if higher—

(i) In the case of parents and other caretaker relatives described in § 435.110(b) of this part, the income standard established in accordance with § 435.110(c) of this part;

(ii) In the case of pregnant women, the income standard established in accordance with § 435.116(c) of this part;

(iii) In the case of individuals under age 19, the income standard established in accordance with § 435.118(c) of this part;

(iv) The income standard established under § 435.218(b)(1)(iv) of this part, if the State has elected to provide coverage under such section and, if applicable, coverage under the State's phase-in plan has been implemented for the individual whose eligibility is being determined.

(2) [Reserved]

(c) For each individual who has submitted an application described in § 435.907 or whose eligibility is being renewed in accordance with § 435.916 and who meets the non-financial requirements for eligibility (or for whom the agency is providing a reasonable opportunity to provide documentation of citizenship or immigration status, in accordance with sections 1903(x), 1902(ee) or 1137(d) of the Act), the State Medicaid agency must comply with the following—

(1) The agency must, promptly and without undue delay consistent with timeliness standards established under § 435.912, furnish Medicaid to each such individual who is under age 19, pregnant, or age 19 or older and under age 65 and not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, and whose household income is at or below the applicable modified adjusted gross income standard.

(2) For each individual described in paragraph (d) of this section, the agency must collect such additional information as may be needed consistent with § 435.907(c), to determine whether such individual is eligible for Medicaid on any basis other than the applicable modified adjusted gross income standard, and furnish Medicaid on such basis.

(3) For individuals not eligible on the basis of the applicable modified adjusted gross income standard, the agency must comply with the requirements set forth in § 435.1200(e) of this part.

(d) For purposes of paragraph (c)(2) of this section, individuals described in this paragraph include:

(1) Individuals whom the agency identifies, on the basis of information contained in an application described in § 435.907(b) of this part, or renewal form described in § 435.916(a)(3) of this part, or on the basis of other information available to the State, as potentially eligible on a basis other than the applicable MAGI standard;

(2) Individuals who submit an alternative application described in § 435.907(c) of this part; and

(3) Individuals who otherwise request a determination of eligibility on a basis other than the applicable MAGI standard as described in § 435.603(j) of this part.

■ 30. Newly redesignated § 435.912 is amended by—

■ A. Revising paragraphs (a) and (b).

■ B. Redesignating paragraphs (c), (d), and (e) as paragraphs (e), (f), and (g), respectively.

■ C. Adding new paragraphs (c) and (d).

The revisions and additions read as follows:

§ 435.912 Timely determination of eligibility.

(a) For purposes of this section—

(1) ''Timeliness standards'' refer to the maximum period of time in which every applicant is entitled to a determination of eligibility, subject to the exceptions in paragraph (e) of this section.

(2) ''Performance standards'' are overall standards for determining eligibility in an efficient and timely manner across a pool of applicants, and include standards for accuracy and consumer satisfaction, but do not include standards for an individual applicant's determination of eligibility.

(b) Consistent with guidance issued by the Secretary, the agency must establish in its State plan timeliness and performance standards for, promptly and without undue delay—

(1) Determining eligibility for Medicaid for individuals who submit applications to the single State agency or its designee.

(2) Determining potential eligibility for, and transferring individuals' electronic accounts to, other insurance affordability programs pursuant to § 435.1200(e) of this part.

(3) Determining eligibility for Medicaid for individuals whose accounts are transferred from other insurance affordability programs, including at initial application as well as at a regularly-scheduled renewal or due to a change in circumstances.

(c)(1) The timeliness and performance standards adopted by the agency under paragraph (b) of this section must cover the period from the date of application or transfer from another insurance affordability program to the date the agency notifies the applicant of its decision or the date the agency transfers the individual to another insurance affordability program in accordance with § 435.1200(e) of this part, and must comply with the requirements of paragraph (c)(2) of this section, subject to additional guidance issued by the Secretary to promote accountability and consistency of high quality consumer experience among States and between insurance affordability programs.

(2) Timeliness and performance standards included in the State plan must account for—

(i) The capabilities and cost of generally available systems and technologies;

(ii) The general availability of electronic data matching and ease of connections to electronic sources of authoritative information to determine and verify eligibility;

(iii) The demonstrated performance and timeliness experience of State Medicaid, CHIP and other insurance affordability programs, as reflected in data reported to the Secretary or otherwise available; and

(iv) The needs of applicants, including applicant preferences for mode of application (such as through an internet Web site, telephone, mail, in-person, or other commonly available electronic means), as well as the relative complexity of adjudicating the eligibility determination based on household, income or other relevant information.

(3) Except as provided in paragraph (e) of this section, the determination of eligibility for any applicant may not exceed—

(i) Ninety days for applicants who apply for Medicaid on the basis of disability; and

(ii) Forty-five days for all other applicants.

(d) The agency must inform applicants of the timeliness standards adopted in accordance with this section.

* * * * *

■ 31. Section 435.916 is revised to read as follows:

§ 435.916 Periodic renewal of Medicaid eligibility.

(a) *Renewal of individuals whose Medicaid eligibility is based on modified adjusted gross income methods (MAGI).* (1) Except as provided in paragraph (d) of this section, the eligibility of Medicaid beneficiaries whose financial eligibility is determined using MAGI-based income must be renewed once every 12 months, and no more frequently than once every 12 months.

(2) Renewal on basis of information available to agency. The agency must make a redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency under § 435.948, § 435.949 and § 435.956 of this part. If the agency is able to renew eligibility based on such information, the agency must, consistent with the requirements of this subpart and subpart E of part 431 of this chapter, notify the individual—

(i) Of the eligibility determination, and basis; and

(ii) That the individual must inform the agency, through any of the modes permitted for submission of applications under § 435.907(a) of this subpart, if any of the information contained in such notice is inaccurate, but that the individual is not required to sign and return such notice if all information provided on such notice is accurate.

(3) Use of a pre-populated renewal form. If the agency cannot renew eligibility in accordance with paragraph (a)(2) of this section, the agency must—

(i) Provide the individual with—

(A) A renewal form containing information, as specified by the Secretary, available to the agency that is needed to renew eligibility.

(B) At least 30 days from the date of the renewal form to respond and provide any necessary information through any of the modes of submission specified in § 435.907(a) of this part, and to sign the renewal form in a manner consistent with § 435.907(f) of the part;

(C) Notice of the agency's decision concerning the renewal of eligibility in accordance with this subpart and subpart E of part 431 of this chapter;

(ii) Verify any information provided by the beneficiary in accordance with § 435.945 through § 435.956 of this part;

(iii) Reconsider in a timely manner the eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination, or a longer period elected by the State, without requiring a new application;

(iv) Not require an individual to complete an in-person interview as part of the renewal process.

(b) *Redetermination of individuals whose Medicaid eligibility is determined on a basis other than modified adjusted gross income.* The agency must redetermine the eligibility of Medicaid beneficiaries excepted from modified adjusted gross income under § 435.603(j) of this part, for circumstances that may change, at least every 12 months. The agency must make a redetermination of eligibility in accordance with the provisions of paragraph (a)(2) of this section, if sufficient information is available to do so. The agency may adopt the procedures described at § 435.916(a)(3) for individuals whose eligibility cannot be renewed in accordance with paragraph (a)(2) of this section.

(1) The agency may consider blindness as continuing until the reviewing physician under § 435.531 of this part determines that a beneficiary's vision has improved beyond the definition of blindness contained in the plan; and

(2) The agency may consider disability as continuing until the review team, under § 435.541 of this part, determines that a beneficiary's disability no longer meets the definition of disability contained in the plan.

(c) *Procedures for reporting changes.* The agency must have procedures designed to ensure that beneficiaries make timely and accurate reports of any change in circumstances that may affect their eligibility and that such changes may be reported through any of the modes for submission of applications described in § 435.907(a) of this part.

(d) *Agency action on information about changes.* (1) Consistent with the requirements of § 435.952 of this part, the agency must promptly redetermine eligibility between regular renewals of eligibility described in paragraphs (b) and (c) of this section whenever it receives information about a change in a beneficiary's circumstances that may affect eligibility.

(i) For renewals of Medicaid beneficiaries whose financial eligibility is determined using MAGI-based income, the agency must limit any requests for additional information from the individual to information relating to such change in circumstance.

(ii) If the agency has enough information available to it to renew eligibility with respect to all eligibility criteria, the agency may begin a new 12-month renewal period under paragraphs (a) or (b) of this section.

(2) If the agency has information about anticipated changes in a

beneficiary's circumstances that may affect his or her eligibility, it must redetermine eligibility at the appropriate time based on such changes.

(e) The agency may request from beneficiaries only the information needed to renew eligibility. Requests for non-applicant information must be conducted in accordance with § 435.907(e) of this part.

(f) Determination of ineligibility and transmission of data pertaining to individuals no longer eligible for Medicaid.

(1) Prior to making a determination of ineligibility, the agency must consider all bases of eligibility, consistent with § 435.911 of this part.

(2) For individuals determined ineligible for Medicaid, the agency must determine potential eligibility for other insurance affordability programs and comply with the procedures set forth in § 435.1200(e) of this part.

(g) Any renewal form or notice must be accessible to persons who are limited English proficient and persons with disabilities, consistent with § 435.905(b) of this subpart.

■ 32. Section 435.940 is revised to read as follows:

§ 435.940 Basis and scope.

The income and eligibility verification requirements set forth at § 435.940 through § 435.960 of this subpart are based on sections 1137, 1902(a)(4), 1902(a)(19), 1903(r)(3) and 1943(b)(3) of the Act and section 1413 of the Affordable Care Act. Nothing in the regulations in this subpart should be construed as limiting the State's program integrity measures or affecting the State's obligation to ensure that only eligible individuals receive benefits, consistent with parts 431 and 455 of this subchapter, or its obligation to provide for methods of administration that are in the best interest of applicants and beneficiaries and are necessary for the proper and efficient operation of the plan, consistent with § 431.15 of this subchapter and section 1902(a)(19) of the Act.

■ 33. Section 435.945 is revised to read as follows:

§ 435.945 General requirements.

(a) Except where the law requires other procedures (such as for citizenship and immigration status information), the agency may accept attestation of information needed to determine the eligibility of an individual for Medicaid (either self-attestation by the individual or attestation by an adult who is in the applicant's household, as defined in § 435.603(f) of this part, or family, as defined in section 36B(d)(1) of the Internal Revenue Code, an authorized representative, or, if the individual is a minor or incapacitated, someone acting responsibly for the individual) without requiring further information (including documentation) from the individual.

(b) The agency must request and use information relevant to verifying an individual's eligibility for Medicaid in accordance with § 435.948 through § 435.956 of this subpart.

(c) The agency must furnish, in a timely manner, income and eligibility information, subject to regulations at part 431 subpart F of this chapter, needed for verifying eligibility to the following programs:

(1) To other agencies in the State and other States and to the Federal programs both listed in § 435.948(a) of this subpart and identified in section 1137(b) of the Act;

(2) Other insurance affordability programs;

(3) The child support enforcement program under part D of title IV of the Act; and

(4) SSA for OASDI under title II and for SSI benefits under title XVI of the Act.

(d) All State eligibility determination systems must conduct data matching through the Public Assistance Reporting Information System (PARIS).

(e) The agency must, as required under section 1137(a)(7) of the Act, and upon request, reimburse another agency listed in § 435.948(a) of this subpart or paragraph (c) of this section for reasonable costs incurred in furnishing information, including new developmental costs.

(f) Prior to requesting information for an applicant or beneficiary from another agency or program under this subpart, the agency must inform the individual that the agency will obtain and use information available to it under this subpart to verify income and eligibility or for other purposes directly connected to the administration of the State plan.

(g) Consistent with § 431.16 of this subchapter, the agency must report information as prescribed by the Secretary for purposes of determining compliance with § 431.305 of this subchapter, subpart P of part 431, § 435.910, § 435.913, and § 435.940 through § 435.965 of this subpart and of evaluating the effectiveness of the income and eligibility verification system.

(h) Information exchanged electronically between the State Medicaid agency and any other agency or program must be sent and received via secure electronic interfaces as defined in § 435.4 of this part.

(i) The agency must execute written agreements with other agencies before releasing data to, or requesting data from, those agencies. Such agreements must provide for appropriate safeguards limiting the use and disclosure of information as required by Federal or State law or regulations.

(j) *Verification plan.* The agency must develop, and update as modified, and submit to the Secretary, upon request, a verification plan describing the verification policies and procedures adopted by the State agency to implement the provisions set forth in § 435.940 through § 435.956 of this subpart in a format and manner prescribed by the Secretary.

(k) *Flexibility in information collection and verification.* Subject to approval by the Secretary, the agency may request and use information from a source or sources alternative to those listed in § 435.948(a) of this subpart, or through a mechanism other than the electronic service described in § 435.949(a) of this subpart, provided that such alternative source or mechanism will reduce the administrative costs and burdens on individuals and States while maximizing accuracy, minimizing delay, meeting applicable requirements relating to the confidentiality, disclosure, maintenance, or use of information, and promoting coordination with other insurance affordability programs.

■ 34. Section 435.948 is revised to read as follows:

§ 435.948 Verifying financial information.

(a) The agency must in accordance with this section request the following information relating to financial eligibility from other agencies in the State and other States and Federal programs to the extent the agency determines such information is useful to verifying the financial eligibility of an individual:

(1) Information related to wages, net earnings from self-employment, unearned income and resources from the State Wage Information Collection Agency (SWICA), the Internal Revenue Service (IRS), the Social Security Administration (SSA), the agencies administering the State unemployment compensation laws, the State-administered supplementary payment programs under section 1616(a) of the Act, and any State program administered under a plan approved under Titles I, X, XIV, or XVI of the Act; and

(2) Information related to eligibility or enrollment from the Supplemental Nutrition Assistance Program, the State

program funded under part A of title IV of the Act, and other insurance affordability programs.

(b) To the extent that the information identified in paragraph (a) of this section is available through the electronic service established in accordance with § 435.949 of this subpart, the agency must obtain the information through such service.

(c) The agency must request the information by SSN, or if an SSN is not available, using other personally identifying information in the individual's account, if possible.

■ 35. Section 435.949 is added to read as follows:

§ 435.949 Verification of information through an electronic service.

(a) The Secretary will establish an electronic service through which States may verify certain information with, or obtain such information from, Federal agencies and other data sources, including SSA, the Department of Treasury, and the Department of Homeland Security.

(b) To the extent that information related to eligibility for Medicaid is available through the electronic service established by the Secretary, States must obtain the information through such service, subject to the requirements in subpart C of part 433 of this chapter, except as provided for in § 435.945(k) of this subpart.

■ 36. Section 435.952 is revised to read as follows:

§ 435.952 Use of information and requests of additional information from individuals.

(a) The agency must promptly evaluate information received or obtained by it in accordance with regulations under § 435.940 through § 435.960 of this subpart to determine whether such information may affect the eligibility of an individual or the benefits to which he or she is entitled.

(b) If information provided by or on behalf of an individual (on the application or renewal form or otherwise) is reasonably compatible with information obtained by the agency in accordance with § 435.948, § 435.949 or § 435.956 of this subpart, the agency must determine or renew eligibility based on such information.

(c) An individual must not be required to provide additional information or documentation unless information needed by the agency in accordance with § 435.948, § 435.949 or § 435.956 of this subpart cannot be obtained electronically or the information obtained electronically is not reasonably compatible, as provided in the verification plan described in § 435.945(j) with information provided by or on behalf of the individual.

(1) Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both are either above or at or below the applicable income standard or other relevant income threshold.

(2) If information provided by or on behalf of an individual is not reasonably compatible with information obtained through an electronic data match, the agency must seek additional information from the individual, including—

(i) A statement which reasonably explains the discrepancy; or

(ii) Other information (which may include documentation), provided that documentation from the individual is permitted only to the extent electronic data are not available and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible individuals to be denied coverage;

(iii) The agency must provide the individual a reasonable period to furnish any additional information required under paragraph (c) of this section.

(d) The agency may not deny or terminate eligibility or reduce benefits for any individual on the basis of information received in accordance with regulations under § 435.940 through § 435.960 of this subpart unless the agency has sought additional information from the individual in accordance with paragraph (c) of this section, and provided proper notice and hearing rights to the individual in accordance with this subpart and subpart E of part 431.

§ 435.953 [Removed]

■ 37. Section 435.953 is removed.

§ 435.955 [Removed]

■ 38. Section 435.955 is removed.

■ 39. Section 435.956 is added to read as follows:

§ 435.956 Verification of other non-financial information.

(a) [Reserved]

(b) [Reserved]

(c) *State residency.* (1) The agency may verify State residency in accordance with § 435.945(a) of this subpart or through other reasonable verification procedures consistent with the requirements in § 435.952 of this subpart.

(2) Evidence of immigration status may not be used to determine that an individual is not a State resident.

(d) *Social Security numbers.* The agency must verify Social Security numbers (SSNs) in accordance with § 435.910 of this subpart.

(e) *Pregnancy.* The agency must accept self-attestation of pregnancy unless the State has information that is not reasonably compatible with such attestation, subject to the requirements of § 435.952 of this subpart.

(f) *Age, date of birth and household size.* The agency may verify date of birth and the individuals that comprise an individual's household, as defined in § 435.603(f) of this part, in accordance with § 435.945(a) of this subpart or through other reasonable verification procedures consistent with the requirements in § 435.952 of this subpart.

§ 435.1002 [Amended]

■ 40. Amend § 435.1002(b) by removing the reference ''§§ 435.914 and'' and adding in its place the reference ''§§ 435.915 and''.

§ 435.1102 [Amended]

■ 41. Amend § 435.1102(a) by removing the term ''family income'' and adding in its place the term ''household income''.

■ 42. Subpart M is added to read as follows:

Subpart M—Coordination of Eligibility and Enrollment Between Medicaid, CHIP, Exchanges and Other Insurance Affordability Programs

§ 435.1200 Medicaid agency responsibilities.

(a) *Statutory basis and purpose.* This section implements sections 1943 and 2102(b)(3)(B) of the Affordable Care Act to ensure coordinated eligibility and enrollment among insurance affordability programs.

(b) *General requirements.* The State Medicaid agency must—

(1) Fulfill the responsibilities set forth in paragraphs (d) and (e) and, if applicable, paragraph (c) of this section in partnership with other insurance affordability programs.

(2) Certify for the Exchange and other insurance affordability programs the criteria applied in determining Medicaid eligibility.

(3) Enter into and, upon request, provide to the Secretary one or more agreements with the Exchange and the agencies administering other insurance

affordability programs as are necessary to fulfill the requirements of this section, including a clear delineation of the responsibilities of each program to—

(i) Minimize burden on individuals;

(ii) Ensure compliance with paragraphs (d) through (f) of this section and, if applicable, paragraph (c) of this section;

(iii) Ensure prompt determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards established under § 435.912, based on the date the application is submitted to any insurance affordability program.

(c) *Provision of Medicaid for individuals found eligible for Medicaid by another insurance affordability program.* If the agency has entered into an agreement in accordance with § 431.10(d) of this subchapter under which the Exchange or other insurance affordability program makes final determinations of Medicaid eligibility, for each individual determined so eligible by the Exchange or other program, the agency must—

(1) Establish procedures to receive, via secure electronic interface, the electronic account containing the determination of Medicaid eligibility;

(2) Comply with the provisions of § 435.911 of this part to the same extent as if the application had been submitted to the Medicaid agency; and

(3) Comply with the provisions of § 431.10 of this subchapter to ensure it maintains oversight for the Medicaid program.

(d) *Transfer from other insurance affordability programs to the State Medicaid agency.* For individuals for whom another insurance affordability program has not made a determination of Medicaid eligibility, but who have been screened as potentially Medicaid eligible, the agency must—

(1) Accept, via secure electronic interface, the electronic account for the individual;

(2) Not request information or documentation from the individual already provided to another insurance affordability program and included in the individual's electronic account or other transmission from the other program.

(3) Promptly and without undue delay, consistent with timeliness standards established under § 435.912, determine the Medicaid eligibility of the individual, in accordance with § 435.911 of this part, without requiring submission of another application.

(4) Accept any finding relating to a criterion of eligibility made by such program, without further verification, if such finding was made in accordance with policies and procedures which are the same as those applied by the agency or approved by it in the agreement described in paragraph (b) of this section;

(5) Notify such program of the receipt of the electronic account.

(6) Notify such program of the final determination of eligibility made by the agency for individuals who enroll in the other insurance affordability program pending completion of the determination of Medicaid eligibility.

(e) *Evaluation of eligibility for other insurance affordability programs*—(1) *Individuals determined not eligible for Medicaid.* For each individual who submits an application or renewal form to the agency which includes sufficient information to determine Medicaid eligibility, or whose eligibility is being renewed pursuant to a change in circumstance in accordance with § 435.916(d) of this part, and whom the agency determines is not eligible for Medicaid, the agency must, promptly and without undue delay, consistent with timeliness standards established under § 435.912 of this part, determine potential eligibility for, and, as appropriate, transfer via a secure electronic interface the individual's electronic account to, other insurance affordability programs.

(2) *Individuals undergoing a Medicaid eligibility determination on a basis other than MAGI.* In the case of an individual with household income greater than the applicable MAGI standard and for whom the agency is determining eligibility in accordance with § 435.911(c)(2) of this part, the agency must promptly and without undue delay, consistent with timeliness standards established under § 435.912 of this part, determine potential eligibility for, and as appropriate transfer via secure electronic interface, the individual's electronic account to, other insurance affordability programs and provide timely notice to such other program—

(i) That the individual is not Medicaid eligible on the basis of the applicable MAGI standard, but that a final determination of Medicaid eligibility is still pending; and

(ii) Of the agency's final determination of eligibility or ineligibility for Medicaid.

(3) The agency may enter into an agreement with the Exchange to make determinations of eligibility for advance payments of the premium tax credit and cost sharing reductions, consistent with 45 CFR 155.110(a)(2).

(f) *Internet Web site.* (1) The State Medicaid agency must make available to current and prospective Medicaid applicants and beneficiaries a Web site that—

(i) Operates in conjunction with or is linked to the Web site described in § 457.340(a) of this subchapter and to the Web site established by the Exchange under 45 CFR 155.205; and

(ii) Supports applicant and beneficiary activities, including accessing information on the insurance affordability programs available in the State, applying for and renewing coverage, and other activities as appropriate.

(2) Such Web site, any interactive kiosks and other information systems established by the State to support Medicaid information and enrollment activities must be in plain language and be accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this subpart.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 43. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302)

■ 44a. In part 457, remove the term ''family income'' wherever it appears and add in its place the term ''household income''.

■ 44b. In part 457, remove the term ''Family income'' wherever it appears and add in its place the term ''Household income''.

■ 45. In part 457 remove ''SCHIP'' wherever it appears and add in its place ''CHIP''.

■ 46. Section § 457.10 is amended by—

■ A. Removing the definition of ''Medicaid applicable income level.''

■ B. Adding the following definitions in alphabetical order ''Advanced payments of the premium tax credit (APTC),'' ''Affordable Insurance Exchange (Exchange),'' ''Application,'' ''Electronic account,'' ''Household income,'' ''Insurance affordability program,'' ''Secure electronic interface,'' and ''Shared eligibility service.''

The additions read as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Advanced payments of the premium tax credit (APTC) has the meaning given the term in 45 CFR 155.20.

Affordable Insurance Exchange (Exchange) has the meaning given the term ''Exchange'' in 45 CFR 155.20.

Application means the single, streamlined application form that is used by the State in accordance with

§ 435.907(b) of this chapter and 45 CFR 155.405 for individuals to apply for coverage for all insurance affordability programs.

* * * * *

Electronic account means an electronic file that includes all information collected and generated by the State regarding each individual's CHIP eligibility and enrollment, including all documentation required under § 457.380 of this part.

* * * * *

Household income is defined as provided in § 435.603(d) of this chapter.

Insurance affordability program is defined as provided in § 435.4 of this chapter.

* * * * *

Secure electronic interface is defined as provided in § 435.4 of this chapter.

Shared eligibility service is defined as provided in § 435.4 of this chapter.

* * * * *

■ 47. Section § 457.80 is amended by revising paragraph (c)(3) to read as follows:

§ 457.80 Current State child health insurance coverage and coordination.

* * * * *

(c) * * *

(3) Ensure coordination with other insurance affordability programs in the determination of eligibility and enrollment in coverage to ensure that all eligible individuals are enrolled in the appropriate program, including through use of the procedures described in § 457.305, § 457.348 and § 457.350 of this part.

■ 48. Section 457.300 is amended by—

■ A. Republishing paragraph (a) introductory text.

■ B. Adding paragraphs (a)(4) and (a)(5)

■ C. Revising paragraph (c).

The addition and revision reads as follows:

§ 457.300 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements—

* * * * *

(4) Section 2107(e)(1)(O) of the Affordable Care Act, which relates to coordination of CHIP with the Exchanges and the State Medicaid agency.

(5) Section 2107(e)(1)(F) of the Affordable Care Act, which relates to income determined based on modified adjusted gross income.

* * * * *

(c) *Applicability.* The requirements of this subpart apply to child health assistance provided under a separate child health program. Regulations relating to eligibility, screening, applications and enrollment that are applicable to a Medicaid expansion program are found at § 435.4, § 435.229, § 435.905 through § 435.908, § 435.1102, § 435.940 through § 435.958, § 435.1200, § 436.3, § 436.229, and § 436.1102 of this chapter.

■ 49. Section 457.301 is amended by—

■ A. Adding the definitions of ''Eligibility determination,'' ''Family size,'' ''Medicaid applicable income level,'' and ''Non-applicant'' in alphabetical order.

■ B. Removing the definition of ''Joint application.''

The additions read as follows:

§ 457.301 Definitions and use of terms.

* * * * *

Eligibility determination means an approval or denial of eligibility in accordance with§ 457.340 as well as a renewal or termination of eligibility under § 457.343 of this subpart.

Family size is defined as provided in § 435.603(b) of this chapter.

Medicaid applicable income level means, for a child, the effective income level (expressed as a percentage of the Federal poverty level and converted to a modified adjusted gross income equivalent level in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act) specified under the policies of the State plan under title XIX of the Act as of March 31, 1997 for the child to be eligible for Medicaid under either section 1902(l)(2) or 1905(n)(2) of the Act, or under a section 1115 waiver authorized by the Secretary (taking into consideration any applicable income methodologies adopted under the authority of section 1902(r)(2) of the Act).

Non-applicant means an individual who is not seeking an eligibility determination for him or herself and is included in an applicant's or enrollee's household to determine eligibility for such applicant or enrollee.

* * * * *

■ 50. Section 457.305 is revised to read as follows:

§ 457.305 State plan provisions.

The State plan must include a description of—

(a) The standards, consistent with § 457.310 and § 457.320 of this subpart, and financial methodologies consistent with § 457.315 of this subpart used to determine the eligibility of children for coverage under the State plan.

(b) The State's policies governing enrollment and disenrollment; processes for screening applicants for and, if eligible, facilitating their enrollment in other insurance affordability programs; and processes for implementing waiting lists and enrollment caps (if any).

■ 51. Section 457.310 is amended by—

■ A. Republishing paragraph (b) introductory text.

■ B. Revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) introductory text, and (b)(1)(iii)(B).

■ C. Adding paragraph (d).

The revisions and addition read as follows:

§ 457.310 Targeted low-income child.

* * * * *

(b) *Standards.* A targeted low-income child must meet the following standards:

(1) * * *

(i) Has a household income, as determined in accordance with § 457.315 of this subpart, at or below 200 percent of the Federal poverty level for a family of the size involved;

(ii) Resides in a State with no Medicaid applicable income level;

(iii) Resides in a State that has a Medicaid applicable income level and has a household income that either—

* * * * *

(B) Does not exceed the income level specified for such child to be eligible for medical assistance under policies of the State plan under title XIX on June 1, 1997.

* * * * *

(d) A targeted low-income child must also include any child enrolled in Medicaid on December 31, 2013 who is determined to be ineligible for Medicaid as a result of the elimination of income disregards as specified under § 435.603(g) of this chapter, regardless of any other standards set forth in this section except those in paragraph (c) of this section. Such a child shall continue to be a targeted low-income child under this paragraph until the date of the child's next renewal under § 457.343 of this subpart.

■ 52. Section 457.315 is added to read as follows:

§ 457.315 Application of modified adjusted gross income and household definition.

(a) Effective January 1, 2014, the State must apply the financial methodologies set forth in paragraphs (b) through (i) of § 435.603 of this chapter in determining the financial eligibility of all individuals for CHIP. The exception to application of such methods for individuals for whom the State relies on a finding of income made by an Express Lane agency at § 435.603(j)(1) of this subpart also applies.

(b) In the case of determining ongoing eligibility for enrollees determined

eligible for CHIP on or before December 31, 2013, application of the financial methodologies set forth in this section will not be applied until March 31, 2014 or the next regularly-scheduled renewal of eligibility for such individual under § 457.343, whichever is later.

■ 53. Section 457.320 is amended by—

■ A. Removing paragraphs (a)(4) and (a)(6).

■ B. Redesignating paragraphs (a)(5), (a)(7), (a)(8), (a)(9), and (a)(10) as paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively.

■ C. Revising paragraph (d).

■ D. Removing and reserving paragraph (e)(2).

The revisions read as follows:

§ 457.320 Other eligibility standards.

* * * * *

(d) *Residency.* (1) Residency for a non-institutionalized child who is not a ward of the State must be determined in accordance with § 435.403(i) of this chapter.

(2) Residency for a targeted low-income pregnant woman defined at 2112 of the Act must be determined in accordance with § 435.403(h) of this chapter.

(3) A State may not—

(i) Impose a durational residency requirement;

(ii) Preclude the following individuals from declaring residence in a State—

(A) An institutionalized child who is not a ward of a State, if the State is the State of residence of the child's custodial parent or caretaker at the time of placement; or

(B) A child who is a ward of a State, regardless of where the child lives

(4) In cases of disputed residency, the State must follow the process described in § 435.403(m) of this chapter.

(e) * * *

(2) [Reserved]

■ 54. Section 457.330 is added to read as follows:

§ 457.330 Application.

The State shall use the single, streamlined application used by the State in accordance with paragraph (b) of § 435.907 of this chapter, and otherwise comply with such section, except that the terms of § 435.907(c) of this chapter (relating to applicants seeking coverage on a basis other than modified adjusted gross income) do not apply.

■ 55. Section 457.340 is amended by—

■ A. Revising the section heading.

■ B. Revising paragraphs (a), (b), (d), and (f).

The revisions read as follows:

§ 457.340 Application for and enrollment in CHIP.

(a) *Application and renewal assistance, availability of program information, and Internet Web site.* The terms of § 435.905, § 435.906, § 435.908, and § 435.1200(f) of this chapter apply equally to the State in administering a separate CHIP.

(b) *Use of Social Security number.* The terms of § 435.910 and § 435.907(e) of this chapter regarding the provision and use of Social Security Numbers and non-applicant information apply equally to the State in administering a separate CHIP.

* * * * *

(d) *Timely determination of eligibility.* (1) The terms in § 435.912 of this chapter apply equally to CHIP, except that standards for transferring electronic accounts to other insurance affordability programs are pursuant to § 457.350 and the standards for receiving applications from other insurance affordability programs are pursuant to § 457.348 of this part.

(2) In applying timeliness standards, the State must define ''date of application'' and must count each calendar day from the date of application to the day the agency provides notice of its eligibility decision.

* * * * *

(f) *Effective date of eligibility.* A State must specify a method for determining the effective date of eligibility for CHIP, which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of children between CHIP and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage.

■ 56. Section 457.343 is added to read as follows:

§ 457.343 Periodic renewal of CHIP eligibility.

The renewal procedures described in § 435.916 of this chapter apply equally to the State in administering a separate CHIP, except that the State shall verify information needed to renew CHIP eligibility in accordance with § 457.380 of this subpart, shall provide notice regarding the State's determination of renewed eligibility or termination in accordance with § 457.340(e) of this subpart and shall comply with the requirements set forth in § 457.350 of this subpart for screening individuals for other insurance affordability programs and transmitting such individuals' electronic account and other relevant information to the appropriate program.

■ 57. Section 457.348 is added to read as follows:

§ 457.348 Determinations of Children's Health Insurance Program eligibility by other insurance affordability programs.

(a) *Agreements with other insurance affordability programs.* The State must enter into and, upon request, provide to the Secretary one or more agreements with the Exchange and the agencies administering other insurance affordability programs as are necessary to fulfill the requirements of this section, including a clear delineation of the responsibilities of each program to—

(1) Minimize burden on individuals;

(2) Ensure compliance with paragraph (c) of this section, § 457.350, and if applicable, paragraph (b) of this section;

(3) Ensure prompt determination of eligibility and enrollment in the appropriate program without undue delay, consistent with the timeliness standards established under § 457.340(d), based on the date the application is submitted to any insurance affordability program.

(b) *Provision of CHIP for individuals found eligible for CHIP by another insurance affordability program.* If a State accepts final determinations of CHIP eligibility made by another insurance affordability program, for each individual determined so eligible by the other insurance affordability program, the State must—

(1) Establish procedures to receive, via secure electronic interface, the electronic account containing the determination of CHIP eligibility; and

(2) Comply with the provisions of § 457.340 of this subpart to the same extent as if the application had been submitted to the State.

(3) Maintain proper oversight of the eligibility determinations made by the other program.

(c) *Transfer from other insurance affordability programs to CHIP.* For individuals for whom another insurance affordability program has not made a determination of CHIP eligibility, but who have been screened as potentially CHIP eligible, the State must—

(1) Accept, via secure electronic interface, the electronic account for the individual.

(2) Not request information or documentation from the individual already provided to the other insurance affordability program and included in the individual's electronic account or other transmission from the other program;

(3) Promptly and without undue delay, consistent with the timeliness standards established under § 457.340(d) of this subpart, determine

the CHIP eligibility of the individual, in accordance with § 457.340 of this subpart, without requiring submission of another application;

(4) Accept any finding relating to a criterion of eligibility made by such program, without further verification, if such finding was made in accordance with policies and procedures which are the same as those applied by the State in accordance with § 457.380 of this subpart or approved by it in the agreement described in paragraph (a) of this section;

(5) Notify such program of the receipt of the electronic account.

(d) *Certification of eligibility criteria.* The State must certify for the Exchange and other insurance affordability programs the criteria applied in determining CHIP eligibility.

■ 58. Section 457.350 is amended by—

■ A. Revising the section heading.

■ B. Revising paragraphs (a), (b), (c), and (f).

■ C. Removing and reserving paragraph (d).

■ D. Adding paragraphs (i), (j), and (k).

The additions and revisions read as follows:

§ 457.350 Eligibility screening and enrollment in other insurance affordability programs.

(a) *State plan requirement.* The State plan shall include a description of the coordinated eligibility and enrollment procedures used, at an initial and any follow-up eligibility determination, including any periodic redetermination, to ensure that:

(1) Only targeted low-income children are furnished CHIP coverage under the plan; and

(2) Enrollment is facilitated for applicants and enrollees found to be potentially eligible for other insurance affordability programs in accordance with this section.

(b) *Screening objectives.* A State must promptly and without undue delay, consistent with the timeliness standards established under § 457.340(d) of this subpart, identify any applicant, enrollee, or other individual who submits an application or renewal form to the State which includes sufficient information to determine CHIP eligibility, or whose eligibility is being renewed under a change in circumstance in accordance with § 457.343 of this subpart, and whom the State determines is not eligible or CHIP, but who is potentially eligible for:

(1) Medicaid on the basis of having household income at or below the applicable modified adjusted gross income standard, as defined in § 435.911(b) of this chapter;

(2) Medicaid on another basis, as indicated by information provided on the application or renewal form provided;

(3) Eligibility for other insurance affordability programs.

(c) *Income eligibility test.* To identify the individuals described in paragraphs (b)(1) and (b)(3) of this section, a State must apply the methodologies used to determine household income described in § 457.315 of this subpart or such methodologies as are applied by such other programs.

(d) [Reserved]

* * * * *

(f) *Applicants found potentially eligible for Medicaid based on modified adjusted gross income.* For individuals identified in paragraph (b)(1) of this section, the State must—

(1) Promptly and without undue delay, consistent with the timeliness standards established under § 457.340(d) of this subpart, transfer the individual's electronic account to the Medicaid agency via a secure electronic interface; and

(2) Except as provided in § 457.355 of this subpart, find the applicant ineligible, provisionally ineligible, or suspend the applicant's application for CHIP unless and until the Medicaid application for the applicant is denied; and

(3) Determine or redetermine eligibility for CHIP, consistent with the timeliness standards established under § 457.340(d) of this subpart, if—

(i) The State is notified, in accordance with § 435.1200(d)(5) of this chapter that the applicant has been found ineligible for Medicaid; or

(ii) The State is notified prior to the final Medicaid eligibility determination that the applicant's circumstances have changed and another screening shows that the applicant is no longer potentially eligible for Medicaid.

* * * * *

(i) *Applicants found potentially eligible for other insurance affordability programs.* For individuals identified in paragraph (b)(3) of this section, the State must promptly and without undue delay, consistent with the timeliness standards established under § 457.340(d) of this subpart, transfer the electronic account to the applicable program via a secure electronic interface.

(j) *Applicants potentially eligible for Medicaid on a basis other than modified adjusted gross income.* For individuals identified in paragraph (b)(2) of this section, the State must—

(1) Promptly and without undue delay, consistent with the timeliness standards established under § 457.340(d) of this subpart, transfer the electronic account to the Medicaid agency via a secure electronic interface;

(2) Complete the determination of eligibility for CHIP in accordance with § 457.340 of this subpart; and

(3) Disenroll the enrollee from CHIP if the State is notified in accordance with § 435.1200(d)(5) of this chapter that the applicant has been determined eligible for Medicaid.

(k) A State may enter into an arrangement with the Exchange for the entity that determines eligibility for CHIP to make determinations of eligibility for advanced premium tax credits and cost sharing reductions, consistent with 45 CFR 155.110(a)(2).

■ 59. Section 457.353 is revised to read as follows:

§ 457.353 Monitoring and evaluation of screening process.

States must establish a mechanism and monitor to evaluate the screen and enroll process described at § 457.350 of this subpart to ensure that children who are:

(a) Screened as potentially eligible for other insurance affordability programs are enrolled in such programs, if eligible; or

(b) Determined ineligible for other insurance affordability programs are enrolled in CHIP, if eligible.

■ 60. Section 457.380 is revised to read as follows:

§ 457.380 Eligibility verification.

(a) *General requirements.* Except where law requires other procedures (such as for citizenship and immigration status information), the State may accept attestation of information needed to determine the eligibility of an individual for CHIP (either self-attestation by the individual or attestation by an adult who is in the applicant's household, as defined in § 435.603(f) of this subchapter, or family, as defined in section 36B(d)(1) of the Internal Revenue Code, an authorized representative, or if the individual is a minor or incapacitated, someone acting responsibly for the individual) without requiring further information (including documentation) from the individual.

(b) [Reserved]

(c) *State residents.* If the State does not accept self-attestation of residency, the State must verify residency in accordance with § 435.956(c) of this chapter.

(d) *Income.* If the State does not accept self-attestation of income, the State must verify the income of an individual by using the data sources and

following standards and procedures for verification of financial eligibility consistent with § 435.945(a), § 435.948 and § 435.952 of this chapter.

(e) *Verification of other factors of eligibility.* For eligibility requirements not described in paragraphs (c) or (d) of this section, a State may adopt reasonable verification procedures, consistent with the requirements in § 435.952 of this chapter, except that the State must accept self-attestation of pregnancy unless the State has information that is not reasonably compatible with such attestation.

(f) *Requesting information.* The terms of § 435.952 of this chapter apply equally to the State in administering a separate CHIP.

(g) *Electronic service.* Except to the extent permitted under paragraph (i) of this section, to the extent that information sought under this section is available through the electronic service described in § 435.949 of this chapter, the State must obtain the information through that service.

(h) *Interaction with program integrity requirements.* Nothing in this section should be construed as limiting the State's program integrity measures or affecting the State's obligation to ensure that only eligible individuals receive benefits or its obligation to provide for methods of administration that are in the best interest of applicants and enrollees and are necessary for the proper and efficient operation of the plan.

(i) *Flexibility in information collection and verification.* Subject to approval by the Secretary, the State may modify the methods to be used for collection of information and verification of information as set forth in this section, provided that such alternative source will reduce the administrative costs and burdens on individuals and States while maximizing accuracy, minimizing delay, meeting applicable requirements relating to the confidentiality, disclosure, maintenance, or use of information, and promoting coordination with other insurance affordability programs.

(j) *Verification plan.* The State must develop, and update as modified, and submit to the Secretary, upon request, a verification plan describing the verification policies and procedures adopted by the State to implement the provisions set forth in this section in a format and manner prescribed by the Secretary.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 2, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 5, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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Part IV

Department of Health and Human Services

45 CFR Part 153

Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 153

[CMS–9975–F]

RIN 0938–AR07

Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule implements standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. These programs will mitigate the impact of potential adverse selection and stabilize premiums in the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges (''Exchanges'') are implemented, starting in 2014. The transitional State-based reinsurance program serves to reduce uncertainty by sharing risk in the individual market through making payments for high claims costs for enrollees. The temporary Federally administered risk corridors program serves to protect against uncertainty in rate setting by qualified health plans sharing risk in losses and gains with the Federal government. The permanent State-based risk adjustment program provides payments to health insurance issuers that disproportionately attract high-risk populations (such as individuals with chronic conditions).

DATES: *Effective Date:* These regulations are effective on May 22, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Abbreviations

CMS Centers for Medicare & Medicaid Services

HHS U.S. Department of Health and Human Services

HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)

MLR Medical Loss Ratio

PCIP Pre-existing Condition Insurance Plan

PHS Act Public Health Service Act (42 U.S.C. 201 *et seq.*)

QHP Qualified Health Plan

Table of Contents

I. Background
- A. Legislative Overview
- B. Introduction

II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments
- A. Subpart A—General Provisions
- B. Subpart B—State Notice of Benefit and Payment Parameters
- C. Subpart C—State Standards Related to the Reinsurance Program
- D. Subpart D—State Standards Related to the Risk Adjustment Program
- E. Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program
- F. Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program
- G. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

III. Provisions of the Final Regulations

IV. Collection of Information Requirements

V. Summary of Regulatory Impact Analysis

VI. Regulatory Flexibility Act

I. Background

A. Legislative Overview

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. In addition, Exchanges will give individuals and small businesses the same purchasing power as big businesses. The Departments of Health and Human Services, Labor, and the Treasury are working in close coordination to release guidance related to Exchanges in several phases. A Request for Comment relating to Exchanges was published in the **Federal Register** on August 3, 2010. An Initial Guidance to States on Exchanges was issued on November 18, 2010. A proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011. Two proposed rules, including the proposed form of this rule, were published in the **Federal Register** on July 15, 2011 to implement components of Exchanges and health insurance premium stabilization programs (that is, reinsurance, risk corridors, and risk adjustment) from the Affordable Care Act. A proposed rule regarding eligibility for Exchanges was published in the **Federal Register** on August 17, 2011. A proposed rule on the Health Insurance Premium Tax Credit was published in the **Federal Register** on August 17, 2011. A proposed rule making changes to eligibility for the Medicaid program was published in the **Federal Register** on August 17, 2011. The final versions of the Exchange Establishment and Eligibility rules were made available for public inspection at the Office of the Federal Register on March 12, 2012. A final version of the Medicaid rule is being made available for public inspection at the Office of the Federal Register on the same date as this rule.

Section 1341 of the Affordable Care Act provides that each State must establish a transitional reinsurance program to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation (2014 through 2016). Section 1342 provides that HHS must establish a temporary risk corridors program that will apply to QHPs in the individual and small group markets for the first three years of Exchange operation (2014 through 2016). Section 1343 provides that each State must establish a permanent program of risk adjustment for all non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges. These risk-spreading mechanisms, which will be implemented by HHS and the States, are designed to mitigate the potential impact of adverse selection and provide stability for health insurance issuers in the individual and small group markets. If a State chooses not to establish a transitional reinsurance program or a risk adjustment program, this final rule provides that HHS will do so on its behalf.

Section 1321(a) also provides broad authority for HHS to establish standards and regulations to implement the statutory requirements related to reinsurance, risk adjustment, and the other components of title I of the Affordable Care Act. Section 1321(a)(2) requires, in issuing such regulations, HHS to engage in stakeholder consultation in a way that ensures balanced representation among interested parties. We describe the consultation activities HHS has undertaken later in this introduction. Section 1321(c)(1) authorizes HHS to establish and implement reinsurance,

risk adjustment, and the other components of title I of the Affordable Care Act in States that have not done so.

B. Introduction

Underpinning the goals of high-quality, affordable health insurance coverage is the need to minimize the possible negative effects of adverse selection. Adverse selection results when a health insurance purchaser understands his or her own potential health risk better than the health insurance issuer does, resulting in a health plan having higher costs than anticipated.

To protect themselves from adverse selection, issuers may include a margin in their pricing (that is, set premiums higher than necessary) in order to offset the potential expense of high-cost enrollees. The uncertainty resulting from adverse selection could also lead an issuer to be more cautious about offering certain plan designs in the Exchange. This risk will likely be greatest in the first years of the Exchange; however, the risk should decrease as the new market matures and issuers gain actual claims experience with this new population.

As experience in States has shown, offsetting the adverse selection from insurance reforms may be best accomplished by broadening the risk pool: Making coverage affordable through lower premiums and targeted financial assistance and making coverage a responsibility so that people pay premiums regardless of their current need for health care. In addition, to further minimize the negative effects of adverse selection and foster a stable marketplace from year one of implementation, the Affordable Care Act establishes transitional reinsurance and temporary risk corridors programs, and a permanent risk adjustment program to provide payments to health insurance issuers that cover higher-risk populations and to more evenly spread the financial risk borne by issuers.

The transitional reinsurance program and the temporary risk corridors program, which begin in 2014, are designed to provide issuers with greater payment stability as insurance market reforms are implemented. The reinsurance program, which is a State-based program, will reduce the uncertainty of insurance risk in the individual market by partially offsetting risk for high-cost enrollees. By limiting issuers' exposure to high-cost enrollees, this program will attenuate individual market rate increases that might otherwise occur because of the immediate enrollment of individuals with unknown health status. The risk corridors program, which is a Federally administered program, will protect against uncertainty in rates for QHPs by limiting the extent of issuer losses (and gains). On an ongoing basis, the risk adjustment program is intended to provide increased payments to health insurance issuers that attract higher-risk populations (such as those with chronic conditions) and reduce the incentives for issuers to avoid higher-risk enrollees. Under this program, funds are transferred from issuers with lower-risk enrollees to issuers with higher-risk enrollees. Section 1343 of the Affordable Care Act authorizes HHS to utilize criteria and methods similar to those utilized under Parts C or D of title XVIII of the Social Security Act to implement risk adjustment. Standards for the reinsurance, risk corridors, and risk adjustment programs are addressed in this final rule. The following chart summarizes these programs:

Program	Reinsurance	Risk corridors	Risk adjustment
What	Provides funding to issuers that incur high claims costs for enrollees.	Limits issuer losses (and gains)	Transfers funds from lower risk plans to higher risk plans.
Program Operation	State option to operate, regardless of whether the State establishes an Exchange.	HHS	State option to operate if the State establishes an Exchange.
Who Participates	All issuers and third party administrators on behalf of group health plans contribute funding; non-grandfathered individual market plans (inside and outside the Exchange) are eligible for payments.	Qualified health plans	Non-grandfathered individual and small group market plans, inside and outside the Exchange.
Why	Offsets high cost outliers	Protects against inaccurate rate-setting.	Protects against adverse selection.
When	Throughout the year	After reinsurance and risk adjustment.	Before June 30 of the calendar year following the benefit year.
Time Frame	3 years (2014–2016)	3 years (2014–2016)	Permanent.

II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

As indicated in our proposed rule, HHS published a Request for Comment (RFC) on August 3, 2010, inviting the public to provide input regarding the rules that will govern the Exchanges. The comment period closed on October 4, 2010. Comments were submitted by consumer advocacy organizations, medical and health care professional trade associations and societies, medical and health care professional entities, health insurance issuers, insurance trade associations, members of the general public, and employer organizations. The RFC comments were considered in the development of the proposed rule.

Leading up to the issuance of the Premium Stabilization proposed rule, HHS consulted with stakeholders through weekly meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange grant process, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We continue to consult with these stakeholders on the development of guidance related to the reinsurance, risk adjustment, and risk corridors programs. In this final rule, we have responded to comments submitted in response to the Premium Stabilization proposed rule and the RFC, where relevant.

On July 15, 2011, we published in the **Federal Register** (76 FR 41950–41956) the proposed Standards related to Reinsurance, Risk Corridors, and Risk Adjustment. We received approximately 700 comments on the proposed rule. Of the comments received, approximately 200 were submitted as part of letter campaigns related to women's and mental health services, or were general comments on the Affordable Care Act and the government's role in health

care, but were not specific to the proposed rule.

Comments that were specific to the proposed rule represented a wide variety of stakeholders, including States and tribal organizations, health insurance issuers, consumer groups, healthcare providers, industry experts, and members of the public. Many commenters emphasized the importance of the premium stabilization programs as Exchanges and insurance reforms are implemented and addressed the balance between flexibility for States and standardization and predictability for consumers nationwide.

A. Subpart A—General Provisions

1. Basis and Scope (§ 153.10)

Section 153.10(a) of subpart A specified that the general statutory authority for the standards proposed in part 153 are based on the following sections of title I of the Affordable Care Act: sections 1321 and 1341–1343. Section 153.10(b) specified that this part establishes standards for the establishment and operation of a transitional reinsurance program, a temporary risk corridors program, and a permanent risk adjustment program. We received a number of supportive comments on these provisions and we are finalizing them without modification.

2. Definitions (§ 153.20)

In § 153.20, § 153.200, § 153.300, and § 153.600 of the proposed rule, we set forth definitions for terms that are critical to the reinsurance, risk adjustment, and risk corridors programs. Many of the definitions presented in § 153.20 were taken directly from the Affordable Care Act or from existing regulations. New definitions were created to carry out the regulations in part 153. When a term is defined in part 153 other than in subpart A, the definition of the term is applicable only to the relevant subpart or section. The application of the terms defined in § 153.20 is limited to part 153.

Considering the comments received, we are finalizing this section as proposed, with the following modifications:

We are moving a number of definitions that previously appeared in subparts C, D, and G of the proposed rule to subpart A of this final rule. We are revising the definition of ''attachment point'' to clarify that reinsurance payments will apply to claims costs accumulated on an incurred basis in a benefit year, and to specify that reinsurance payments are payable on all covered benefits. We are making conforming revisions to the definitions of ''coinsurance rate'' and ''reinsurance cap.'' We are revising the definition of ''contribution rate'' to be a per capita amount payable with respect to reinsurance contribution enrollees who reside in a State. We are adding a new defined term, ''reinsurance contribution enrollee,'' which means an individual covered by a plan for which reinsurance contributions must be made pursuant to § 153.400(b). We are removing the definition of ''percent of premium'' because this definition is no longer used.

We are modifying the definition of ''risk adjustment methodology'' to mean all parts of the risk adjustment process—the risk adjustment model, the calculation of plan average actuarial risk, the calculation of payments and charges, the risk adjustment data collection approach, and the schedule for the risk adjustment program. We are doing so to clarify the distinct parts of the risk adjustment process. The risk adjustment model calculates individual risk scores. The calculation of plan average actuarial risk adjusts those individual risk scores for rating variation, and calculates average actuarial risk at the plan level. The plan average actuarial risk is used for the calculation of payments and charges for risk adjustment covered plans. The risk adjustment data collection approach specifies how risk adjustment data will be stored, collected, accessed, transmitted, and validated, and the timeframes, data format, and privacy and security standards associated with each. The schedule for the risk adjustment program is the schedule for calculating payments and charges, invoicing issuers for charges, and disbursing payments. We are modifying the definition of ''risk adjustment data'' to mean all data that are used in a risk adjustment model, the calculation of plan average actuarial risk, or the calculation of payments and charges, or that are used for validation or audit of such data. We have added several new definitions—''individual risk score,'' ''calculation of plan average actuarial risk,'' ''calculation of payments and charges,'' and ''risk adjustment data collection approach.''

Finally, we are making a number of clarifying modifications throughout this section.

Comment: We received one comment suggesting that HHS define the benefit year as a calendar year and that the reinsurance program would be best operated on a calendar year basis.

Response: The benefit year was defined as the calendar year in the Exchange Establishment rule. We have cross-referenced this definition in this final rule.

Comment: Although a few commenters supported the proposal that reinsurance be payable only on essential health benefits, the majority of commenters urged that reinsurance be payable on all covered benefits, with several citing the administrative complexity of distinguishing between claims for essential health benefits and claims for other covered benefits.

Response: Because it would be administratively burdensome for issuers to distinguish claims for covered essential health benefits from other claims, we are revising the definitions so that reinsurance is payable on all covered benefits.

Comment: We received several comments disagreeing with the inconsistency in the proposed definition of percent of premium, which would include administrative costs for the fully insured market, but not the self-insured market.

Response: We believe that the statute intended for self-insured plans also to pay administrative costs. However, since we have modified the policy for the collection of contributions as discussed in the preamble to § 153.220, we are no longer proposing a definition for percent of premium.

Comment: We received a number of comments requesting clarification of the definition of a contributing entity for the reinsurance program. Several commenters suggested that HHS clarify that third-party administrators are not financially liable for contributions to be made by group health plans for which they administer benefits.

Response: The Affordable Care Act requires that health insurance issuers and third party administrators on behalf of group health plans make contributions. We are including text in § 153.400 that clarifies which issuers must make reinsurance contributions and which are exempt.

Comment: A few commenters expressed support for the differentiation between the defined terms ''risk adjustment model'' and ''risk adjustment methodology.'' Another commenter suggested an expanded set of definitions to capture more of the steps in the risk adjustment process, including a term to define the methodology for transferring money between plans, and a term to describe an individual enrollee's relative cost compared to that of an average enrollee.

Response: We are adding a definition of ''individual risk score'' to describe a relative measure of predicted health care costs for a particular enrollee. We are adding a definition of ''calculation

of plan average actuarial risk'' to describe the specific calculations used to determine plan average actuarial risk from individual risk scores for a risk adjustment covered plan, including the specification of the risk pool from which average actuarial risk will be calculated. We are adding a definition of ''calculation of payments and charges'' to describe the specific procedures used to determine plan average actuarial risk from individual risk scores for a risk adjustment covered plan, including adjustment for variable rating factors and the specification of the risk pool from which average actuarial risk is to be calculated. We are adding a definition of ''risk adjustment data collection approach'' to describe the specific procedures by which risk adjustment data is to be stored, collected, accessed, and transmitted, and the timeframes, data format, and privacy and security standards with respect thereto.

Comment: We received two comments about the definition of ''risk adjustment data.'' One commenter suggested that the definition be expanded to encompass all aspects of the risk adjustment process. Another commenter requested that HHS not adopt language that would curtail the use of a prospective risk adjustment model.

Response: We are aligning the definition with a number of the other new definitions encompassed in ''risk adjustment methodology.'' We do not intend to curtail the use of a prospective risk adjustment model.

Comment: We received a few comments requesting clarification as to the types of plans that are subject to risk adjustment. Commenters asked specifically about Medicaid managed care plans and multi-State plans.

Response: Section 1343 of the Affordable Care Act requires that health plans (except grandfathered plans) in the individual or small group markets participate in the risk adjustment program. We are modifying the definition of ''risk adjustment covered plan'' in response to comments. This modification clarifies that all health insurance coverage, including multi-State plans and Consumer Operated and Oriented Plans, are risk adjustment covered plans. The risk adjustment program does not apply to Medicare Advantage plans or Medicare Prescription Drug Plans, under which private health plans contract with Medicare to provide Medicare-covered benefits, or to contracts with State Medicaid agencies to provide Medicaid benefits, as payments for such coverage are regulated under provisions of the Social Security Act.

Insurance coverage solely for excepted benefits under title XXVII of the PHS Act will be excluded from risk adjustment. Excepted benefit plans cover a specific set of services, such as vision benefits, while ''major medical'' plans cover a broader set of benefits such as physician and hospital visits. These differences make fair enrollee risk comparison between excepted benefit plans and major medical plans difficult. We are modifying the definition of risk adjustment covered plan to exclude plans determined not to be risk adjustment covered plans in the annual HHS notice of benefit and payment parameters.

B. Subpart B—State Notice of Benefit and Payment Parameters

In this subpart, we proposed a process by which the States that are operating a risk adjustment program or establishing a reinsurance program issue an annual notice of benefit and payment parameters to disseminate information to issuers and other stakeholders about specific requirements to support payment-related functions. This provides a practical way to update certain payment and benefit parameters that may change annually, such as reinsurance contribution rates that are based on annually changing thresholds. This notice will also serve as a mechanism to address other Exchange-related provisions.

1. State Notice of Benefit and Payment Parameters (§ 153.100)

In § 153.100(a), we proposed that a State operating an Exchange, as well as a State establishing a reinsurance program, be required to issue a notice to describe the specific parameters that the State will employ if that State intends to utilize any reinsurance or risk adjustment parameters that differ from those specified in the annual HHS notice of benefit and payment parameters. In paragraph (b) (now paragraph (c)), we proposed specific deadlines for the State notice of benefit and payment parameters. We proposed that those deadlines be tied to the publication of the annual HHS notice of benefit and payment parameters, upon which the public will have an opportunity to comment. Below is a chart detailing the schedules for the annual HHS notice of benefit and payment parameters for benefit year 2014 and subsequent years, with the first two milestones occurring in the calendar year two years before the effective date.

ANNUAL HHS NOTICE OF BENEFIT AND PAYMENT PARAMETERS

HHS publishes advance notice	Mid-October two calendar years before the benefit year.
Comment period ends	Mid-November two calendar years before the benefit year.
HHS publishes final notice	Mid-January of the calendar year before the benefit year.

We proposed that a State that plans to modify Federal parameters issue its notice by early March in the calendar year before the benefit year. We proposed that this requirement set an outer bound for the date by which the final notice is to be issued by a State that intends to utilize any reinsurance or risk adjustment parameters that differ from those specified in the annual HHS notice of benefit and payment parameters.

We also proposed in paragraph (c) (now paragraph (d)), that if a State operating an Exchange or establishing a reinsurance program does not provide public notice of its intent to have State-specific parameters within the period specified, the parameters set forth in the annual HHS notice of benefit and payment parameters will serve as the State parameters.

For the reasons described in the proposed rule and considering the comments received, we are finalizing the provisions proposed in § 153.100 of the proposed rule, with the following modifications: We are clarifying that a State must publish a notice of benefit and payment parameters if it intends to modify the data requirements for reinsurance payments, collect reinsurance contributions, use more than one applicable reinsurance entity, or modify any reinsurance parameters. We are directing a State that operates a risk adjustment program to publish a notice of benefit and payment parameters setting forth the risk adjustment methodology and data validation standards it will use. We are specifying that State notices be issued by March 1 of the calendar year prior to the first benefit year for which the notice applies. We are clarifying that a

State that does not publish a notice of benefit and payment parameters forgoes its right to modify the data requirements for reinsurance payments, collect reinsurance contributions, use more than one applicable reinsurance entity, or use any risk adjustment methodology or data validation standards other than those published in the annual HHS notice of benefit and payment parameters for use by HHS when operating risk adjustment on behalf of a State. We are also making a number of clarifying modifications throughout this section.

Comment: We received a number of comments in support of a requirement that States publish a State notice of benefit and payment parameters. One commenter suggested that we include a requirement that all notices be made public with a period for comment. Another commenter proposed that States be required to justify deviation from any methodologies or parameters set forth in the annual HHS notice of benefit and payment parameters.

Response: While we recognize the value of requiring a public comment period for State notices, we believe that such a requirement should be left to State law and practice. HHS will provide an opportunity for public comment when HHS administers risk adjustment or reinsurance. State law will govern what administrative process is necessary when a State adopts a risk adjustment methodology, or modifies reinsurance parameters, subject to the limits of this final rule and the HHS notice of benefit and payment parameters. We are clarifying the content of the justification to be published by a State that seeks to use a risk adjustment methodology other than the methodology used by HHS when operating risk adjustment on behalf of a State. However, we are not requiring that a State must provide justification for changes to reinsurance payment parameters. As discussed in the preamble in subpart C, we believe a State may have many reasons to make adjustments to the HHS reinsurance payment parameters. As such, we believe that each State should have the flexibility to determine the parameters that best suit the administration of its reinsurance program.

Comment: A number of commenters expressed support for the timing of notice releases as proposed. However, we received a number of comments stating that the proposed timeframe did not allow sufficient time for issuers to prepare their applications for certification for participation in the Exchange in time for the October 2013 open enrollment period. Commenters proposed alternative timeframes for the release of the HHS notice that ranged from January 2012 to June 30, 2012. A number of commenters also stated that, particularly in the initial years, more advanced notice of Federal and State program parameters will be necessary in order for issuers to prepare premiums for the 2014 benefit year.

Response: The timeframe for implementation of the Affordable Care Act makes it difficult for the Federal and State governments to provide more notice than was proposed in the proposed rule. To accommodate States' and issuers' desire for further information with respect to risk adjustment, HHS is planning a number of working sessions with issuers and States. We believe these sessions will provide sufficient information to issuers and States, while providing HHS the time necessary to more fully develop the Federal parameters for the reinsurance and risk adjustment programs. For these reasons, we are clarifying and finalizing the proposed requirement that State notices of benefit and payment parameters be published by March 1 of the calendar year prior to the benefit year.

Comment: We received a comment supporting the requirement that, if a State establishing a reinsurance program does not provide public notice of its intent to have State-specific parameters, the parameters set forth in the annual HHS notice of benefit and payment parameters will serve as the State parameters.

Response: We are finalizing our policy that a State that elects to establish a reinsurance program that does not publish a State notice of benefit and payment parameters by March 1 must adhere to the parameters set forth in the HHS notice of benefit and payment parameters.

2. Standards for the State Notice of Benefit and Payment Parameters (§ 153.110)

We proposed in paragraph (a)(1) (now paragraph (a)), that content related to the reinsurance program include the data requirements and data collection frequency for health insurance issuers to receive reinsurance payments. In paragraph (a)(2) (now paragraph (e)), we proposed that a State that establishes a reinsurance program must specify the attachment point, reinsurance cap, and coinsurance rate if the State plans to use values different from those set forth in the annual HHS notice of benefit and payment parameters. In paragraph (a)(3) (now paragraph (d)), we proposed that if a State plans to use more than one applicable reinsurance entity, the State must include in its State notice of benefit and payment parameters information related to the geographic boundaries of each applicable reinsurance entity and estimates related to the number of enrollees, payments, and premiums available for contributions in each region.

In paragraph (b) (now paragraph (f)), we proposed content related to the risk adjustment program if the State intends to modify the risk adjustment parameters set forth in the annual HHS notice of benefit and payment parameters, including a detailed description of and rationale for any modification.

For the reasons described in the proposed rule and considering the comments received, we are finalizing the provisions proposed in § 153.110 with the following modifications: We are specifying that a State establishing a reinsurance program that elects to collect reinsurance contributions from the fully insured market must announce its intention to do so, and must set forth the data requirements for reinsurance payments in the State notice of benefit and payment parameters. We are clarifying that a State must apply any modified reinsurance parameters uniformly throughout the State. However, as discussed in Subpart C, a State must inform HHS by December 1, 2012, of its intent to collect reinsurance contributions for the 2014 benefit year, and by September 1 of the calendar year that is two years prior to the applicable benefit year if the State elects to collect reinsurance contributions for any benefit year after 2014. A State that elects to collect additional reinsurance contributions must describe the purpose of the additional collection and the additional contribution rate. We are making a number of clarifying modifications throughout this section.

Comment: One commenter supported affording States the flexibility to provide higher reinsurance payments to plans.

Response: We believe that States should have the flexibility to vary reinsurance payments, so long as the reinsurance parameters are uniform throughout the State. However, a State electing to change reinsurance parameters must publish those changed parameters in the State notice of benefit and payment parameters. A State electing to make higher reinsurance payments will be required to collect any additional reinsurance contributions required to fund those higher payments through a State applicable reinsurance entity.

Comment: We received a comment asking that States be provided the

flexibility to use multiple coinsurance rates.

Response: We believe that States generally should have flexibility in setting payment parameters, but we do not believe that the Affordable Care Act intended for a State to allow an applicable reinsurance entity to set multiple payment parameters in the State, or for multiple applicable reinsurance entities in a State to set different payment parameters. We believe that payment parameters set by the State or HHS on behalf of the State should be uniform throughout the State.

Comment: Several commenters supported the requirement that if there are multiple applicable reinsurance entities in a State, these entities must be required to operate in distinct geographic areas.

Response: We are finalizing that requirement in § 153.210(a)(2).

Comment: Several commenters asked for clarification or changes in the content that a State must provide in its notice of benefit and payment parameters. In particular, commenters stated that the proposed rule did not define the term ''risk adjustment data validation methodology.''

Response: We believe our proposed rule struck a balance between providing minimal baselines for States and providing States with flexibility for their State notices. We are clarifying the provisions related to risk adjustment data validation by requiring that § 153.110(f) align with § 153.330(a) and § 153.350.

C. Subpart C—State Standards Related to the Reinsurance Program

Section 1341 of the Affordable Care Act directs that a transitional reinsurance program be established in each State to help stabilize premiums for coverage in the individual market during the benefit years 2014 through 2016. Under this provision, all health insurance issuers, and third-party administrators on behalf of self-insured group health plans, must make contributions to support reinsurance payments to non-grandfathered plans of individual market issuers that cover high-cost individuals. As a basis for reinsurance payments, the law directs HHS to develop a list of 50 to 100 medical conditions to identify high-cost individuals, or to identify alternative methods for payment in consultation with the American Academy of Actuaries.

In subpart C of the proposed rule, we proposed to codify in regulation section 1341 of the Affordable Care Act as it relates to establishing a reinsurance program. Related standards on health insurance issuers with respect to reinsurance were proposed in subpart E of the proposed rule.

1. Reserved (§ 153.200)

Section 153.200 of the proposed rule defined a number of terms used in this subpart. Those definitions have been moved to subpart A. We are reserving this section for future use.

2. State Establishment of a Reinsurance Program (§ 153.210)

In § 153.210 of the proposed rule, we described standards for States regarding the establishment of a reinsurance program. We proposed in paragraph (a) that each State that elects to operate an Exchange must also establish a reinsurance program as required by the law. In paragraph (a)(1), we proposed to codify in regulation section 1341(a) of the Affordable Care Act, which requires that States must either enter into a contract with an existing applicable reinsurance entity or establish an applicable reinsurance entity to carry out the provisions for the reinsurance program. We believe the statute allows State flexibility in selecting an applicable reinsurance entity and did not propose more specific guidelines.

The Affordable Care Act also allows States to set up more than one reinsurance entity, although this option may increase administrative costs. We proposed in paragraph (a)(2) that, for any State that chooses to have more than one reinsurance entity, the State must publish in a State notice of benefit and payment parameters, described in subpart B, information regarding the geographic divisions between the applicable entities. We further interpret the statute to imply that the geographic divisions of the applicable reinsurance entities must be distinct and together cover the entire individual market in the State and not just certain areas or populations. In paragraph (a)(3), we proposed to allow the State to permit a reinsurance entity to subcontract for administrative functions, provided that the State reviews and approves these subcontracted arrangements as described in paragraph (a)(4). We interpreted the statute to allow flexibility in the performance of administrative functions, with the understanding that the responsible party must be the applicable reinsurance entity.

We proposed in paragraph (a)(5) that the establishment of, or contract with, an applicable reinsurance entity must extend for a sufficient period to ensure that the entity can fulfill all reinsurance requirements for the benefit years 2014 through 2016, and any activities required to be undertaken in subsequent periods. Any State in which contributions remain to be disbursed for benefit years beyond 2016 must ensure that an applicable reinsurance entity is available for required payment activities for such additional periods. Section 1341(b)(4) of the Affordable Care Act requires that these payments be completed by December 31, 2018.

We clarified in paragraph (b) that there may be situations in which an applicable reinsurance entity operates a reinsurance program for more than one State. In such cases, we consider each contract to be an individual reinsurance arrangement between a specific State and the applicable reinsurance entity.

We proposed in paragraph (c) to allow a State that does not elect to establish an Exchange to operate its own reinsurance program. Under this circumstance, the State will be required to carry out the provisions of this subpart. In paragraph (d), we proposed that if a State does not elect to establish an Exchange and does not elect to establish its own reinsurance program, HHS will establish the reinsurance program and will perform all the reinsurance functions for that State. These functions would include the collection of all contributions described in § 153.220, including funds required to operate and administer the applicable reinsurance functions. In paragraph (e), we proposed that each State that establishes a reinsurance program must ensure that each applicable reinsurance entity within the State complies with all provisions of this subpart and with subpart E.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions with the following modifications:

In paragraph (a), we are clarifying that because reinsurance is no longer a required Exchange function, each State is eligible to establish a reinsurance program regardless of whether the State establishes an Exchange; we are removing proposed paragraph (c) to conform to this change. We are clarifying in paragraph (a)(2) that each State is required to notify HHS in the manner and timeframe specified by HHS of the percentage of reinsurance contributions received by HHS for the State to be allocated to each applicable reinsurance entity, if applicable. We are moving the requirement that a State publish the geographic boundaries for each applicable reinsurance entity, if it elects to have more than one, to subpart B. Finally, we are making a number of clarifying modifications to this section.

Comment: We received a comment suggesting a number of entities that could serve as a not-for-profit reinsurance entity for a State. We received a few comments urging that we provide more guidance on entities eligible to be State applicable reinsurance entities. One commenter suggested that the State reinsurance entity be subject to both Federal and State oversight.

Response: We believe that a State should have the discretion to select the entity that will administer its reinsurance program, and do not establish specific standards for that selection. We understand the commenter's concern about oversight, and note that § 153.210(d) requires States to ensure compliance with subpart C when the State is operating the reinsurance program. When HHS is operating a reinsurance program on behalf of the State, HHS will also ensure such compliance. Because we believe that States should have flexibility in selection and oversight over the applicable reinsurance entity, we are not proposing further guidance on those matters.

Comment: We received a comment suggesting that HHS provide options for States to terminate an entity for cause.

Response: We believe that nothing in this final rule precludes States from terminating a contract with an applicable reinsurance entity in a manner consistent with State law (including regulations governing contracting). In such an event, the State should ensure a seamless transition of reinsurance functions to another applicable reinsurance entity to prevent any disruption in the program.

Comment: We received many comments suggesting that a State establishing an Exchange not be required to operate a reinsurance program. Commenters stated that it would be difficult for a State to identify a not-for-profit entity to operate the transitional reinsurance program. One commenter suggested that HHS execute a master contract with a single reinsurance entity that satisfies all of the requirements in this final rule and permit States to use that entity. Another commenter stated that a State's options for establishing a reinsurance program should be similar to those it has with respect to establishing a risk adjustment program.

Response: We are no longer requiring that States that establish an Exchange also establish a reinsurance program. We believe that this flexibility is appropriate because some States have previously established reinsurance programs, and may feel they are prepared to operate a reinsurance program for their State. If a State chooses not to establish a reinsurance program, HHS will establish a reinsurance program for that State.

Comment: We received one comment asking HHS to publish a white paper on draft methodologies for reinsurance.

Response: We are describing the general methodology for collecting reinsurance contributions and making reinsurance payments in subpart C of this final rule. We plan to provide further details on this methodology, including the national rate for contributions and State-based reinsurance payment parameters, in the HHS notice of benefit and payment parameters.

Comment: We received a comment seeking clarification on the use of unexpended contribution funds collected in calendar years 2014 through 2016, and funds that may remain after 2016.

Response: We believe that unused reinsurance funds should be used by the State until expended or by December 31, 2018, whichever date comes first, to make reinsurance payments. States are not prohibited from continuing a reinsurance program, but may not use reinsurance contribution funds collected under the reinsurance program in calendar years 2014 through 2016 to fund the program in years after 2018. If contribution funds collected for a calendar year between 2014 and 2016 remain unspent by December 31 of the year, those funds may be carried into the next year to make payments for the next year or to make retroactive payments for prior years.

Comment: We received a comment asking that existing State reinsurance programs be permitted to serve as a combined reinsurance program. The commenter further suggested permitting the use of reinsurance contributions collected under the transitional reinsurance program for an existing State reinsurance program.

Response: We believe that a State with an existing reinsurance program in place can modify that program to comply with the standards for the transitional reinsurance program. The State would be required to contract with a not-for-profit reinsurance entity to administer the program, and the applicable reinsurance entity must comply with the standards. Contributions collected for the transitional reinsurance program must be used to make reinsurance payments pursuant to the transitional reinsurance program based on the payment parameters established by the State or HHS on behalf of the State, and may not be used to fund a separate State reinsurance program.

3. Collection of Reinsurance Contribution Funds (§ 153.220)

In § 153.220 of the proposed rule, we described standards for the collection of reinsurance contribution funds. In paragraph (a)(1) (now paragraph (c)), we proposed to codify in regulation the aggregate contribution amounts required under the Affordable Care Act for reinsurance. The Affordable Care Act requires that the reinsurance entity collect specified additional contribution funds for deposit into the general fund of the U.S. Treasury. In paragraph (a)(2), we proposed to codify in regulation these additional contribution amounts.

Although the transitional reinsurance program is State-based, section 1341(b)(3) sets contribution amounts for the program on a national basis. We considered two approaches to collecting contribution funds: (1) Use of a national uniform contribution rate, and (2) use of a State-level allocation, both set by HHS to ensure that the sum of all contribution funds equals the national amounts set forth in the Affordable Care Act. In paragraph (b), we proposed using a national contribution rate. Use of a national contribution rate is a simpler approach. Further, since there is significant uncertainty about individual market enrollment, the overall health of the enrolled population, and the cost of care for new enrollees, we believed that a national contribution rate would be the less ambiguous approach of the two. All contribution funds collected by a State establishing a reinsurance program under the national contribution rate would stay in that State and be used to make reinsurance payments on valid claims submitted by reinsurance-eligible plans in that State. There are two methods we considered for determining contributions using a national rate: (1) A percent of premium amount applied to all contributing entities, and (2) a flat per capita amount applied to all covered enrollees of contributing entities. In paragraph (b)(1) (now paragraph (e)), we proposed the percent of premium method as the fairest method by which to collect these contributions.

In paragraph (b)(2) (now paragraph (e)), we also proposed requiring that all contribution funds collected for reinsurance payments be used for reinsurance, and all contribution funds collected for the U.S. Treasury be paid to the U.S. Treasury. In paragraph (b)(3)(i), we proposed that a State may collect more than would be collected under the national rate, if the State believes that these amounts are not sufficient to cover the payments it will

make under the payment formula. In paragraph (b)(3)(ii) (now paragraph (g)), we proposed permitting a State to collect more than the amount collected at the national rate to cover the administrative costs of the applicable reinsurance entity.

We also considered the frequency with which applicable reinsurance entities should collect contribution funds from contributing entities. For example, applicable reinsurance entities could collect contribution funds intended for reinsurance payments and payments to the U.S. Treasury on a monthly basis beginning in January 2014 so that reinsurance payments could begin in February 2014.

Considering the comments received, we are finalizing these provisions with the following modifications:

In paragraph (a), we are revising the proposed provisions so that HHS would collect contribution funds from self-insured plans and third-party administrators on their behalf, whether or not a state elects to establish a reinsurance program. This policy is consistent with traditional Federal oversight of self-insured plans. States that establish a reinsurance program would have the option, but not the obligation, to collect contributions from issuers in the fully insured market. If a State does not elect to collect from the fully insured market, HHS would collect contributions from both fully insured and self-insured plans.

In paragraph (b), we are clarifying that a State that elects to establish a reinsurance program must generally notify HHS by September 1 of the calendar year that is two years prior to the applicable benefit year if the State plans to collect reinsurance contributions from fully insured plans. However, due to States' anticipated workload in establishing Exchanges in the fall of 2012, we are postponing the deadline for notifying HHS of a State's intent to collect reinsurance contributions from fully insured plans to December 1, 2012, for the 2014 benefit year (with the notification being required by September 1 of the calendar year two years prior to the applicable benefit year for any benefit year after 2014). The State's notification will be effective for the applicable benefit year and each subsequent benefit year during which reinsurance-related activities continue.

Paragraph (d) describes how contribution funds collected by HHS will be distributed: HHS will distribute the reinsurance contributions collected to the applicable reinsurance entity for a State, net of the State's share of the U.S. Treasury contribution and administrative expenses incurred when performing reinsurance functions under this subpart.

In paragraph (e), we are clarifying that HHS will set the national contribution rate in the annual HHS notice of benefit and payment parameters along with the proportion of the national contribution rate that will be allocated to reinsurance payments, payments to the U.S. Treasury, and administrative expenses of the applicable reinsurance entity for the State or HHS when performing reinsurance functions under this subpart.

In paragraph (g), we are clarifying that a State may elect to collect more than the amounts that would be collected based on the contribution rate to provide funding for administrative expenses or additional reinsurance payments. This policy was proposed in paragraph (b)(3) of the proposed rule. In paragraph (h), we describe the administration of additional State collections. If a State establishes a reinsurance program and elects to collect more than the amounts that would be collected based on the national contribution rate for administrative expenses, then the State must notify HHS within 30 days after publication of the proposed annual HHS notice of benefit and payment parameters of the additional contribution rate that it elects to collect for administrative expenses. Further, the State must ensure that the State's applicable reinsurance entity collects any additional amount for administrative expenses, or accepts additional amounts from HHS in accordance with the State's election under paragraph (a)(1). For reinsurance payments, notwithstanding paragraphs (a)(1) and (a)(2), the State must ensure that the State applicable reinsurance entity collects all additional reinsurance contributions from contributing entities for the purpose of reinsurance payments. In sum, HHS will only collect additional amounts for administrative expenses for a State, and will not collect additional amounts for reinsurance payments for a State. The collection of additional amounts for reinsurance payments must be carried out by the State's applicable reinsurance entity. We are also making a number of clarifying modifications throughout this section.

Comment: We received many comments expressing concern that States may lack the ability to collect contributions from self-insured plans, due to the States' lack of authority and oversight of self-insured plans.

Response: We are revising the proposed collection process so that HHS collects from the self-insured market in all States. We believe that this change in collection process will create a more efficient, centralized collection from self-insured plans that is beneficial to both States and third party administrators on behalf of group health plans. This collection is authorized under HHS' authority under section 1321(c)(1) of the Affordable Care Act to ''take such actions as are necessary to implement'' the requirements of title I of the Affordable Care Act.

Comment: We received overwhelming support for the proposed use of a national uniform contribution rate. However, one commenter expressed concern with this approach, and suggested a State-level allocation to make the redistribution of contribution funds proportional to the size of the State's individual market.

Response: Consistent with the majority of comments, we believe that a national uniform contribution rate is the better approach because it is simpler and more easily implemented for a transitional program. The statute does not specify the approach for collection of contributions, but requires HHS to consult with the NAIC in determining provisions for the reinsurance program. NAIC supported the use of a national contribution rate because it minimizes the burden on States and issuers and is more equitable. NAIC also stated in its official response to the proposed rule that a State-level allocation would be more administratively burdensome for issuers and States and would not guarantee fairness in the collection of contributions. While one commenter expressed concern that use of a national contribution rate would result in underfunding of reinsurance, we believe that a State's right to increase the contribution rate addresses this concern.

Comment: Many commenters supported the proposed percent of premium method, arguing that a percent of premium method better allocates contributions to States with higher premium and healthcare costs. A few commenters opposed use of a percent of premium method due to its complexity and a concern that it could adversely impact the market.

Response: HHS has considered the advantages and disadvantages of both methods, along with the overarching goals for the transitional reinsurance program, which are to (1) Stabilize premiums by offering protection to health insurance issuers against medical cost overruns for high-cost enrollees in the individual market; (2) provide early and prompt payment of reinsurance funds during the benefit year; (3) minimize administrative burden; and (4)

allow contributions collected by or on behalf of a State to remain in that State. Given these goals and the time-limited nature of the program, we believe that the per capita approach will be less complex to administer, particularly with regard to the self-insured market. Further, the per capita approach will better enable us to maintain the goals of the reinsurance program by providing issuers with a more straightforward approach in making contributions to the reinsurance program with minimal administrative burden. A State would still be allowed to collect additional contributions towards reinsurance payment.

While several commenters expressed support for our original proposal of a percent of premium method, these same stakeholders also support timely collection and payment in the reinsurance program, which is an important component of the premium stabilization provided by the reinsurance program. We believe that the per capita approach will best achieve this goal.

4. Calculation of Reinsurance Payments (§ 153.230)

In § 153.230 of the proposed rule, we set the payment policy for the reinsurance program based upon consultation with the American Academy of Actuaries. The reinsurance payment policy must address two basic issues: (1) How to determine the individuals who are covered by reinsurance, and (2) how to determine appropriate payment amounts. Given the short-term nature of the program, our primary objective is to select an implementation approach that is administratively and operationally simple, but satisfies the goals of the program. Therefore, we prefer to use reliable and readily accessible data sources that will allow health insurance issuers to receive prompt payment. We proposed in paragraph (a) that coverage be based on items and services within the essential health benefits for an individual enrollee that exceeds an attachment point.

In paragraph (b), we proposed to announce the reinsurance payment formula and State-specific values for the attachment point, reinsurance cap, and coinsurance rate in the annual HHS notice of benefit and payment parameters. We believe that publishing this information in a Federal notice is the best approach for announcing the attachment point and reinsurance cap, as these values may change in calendar years 2015 and 2016. The Affordable Care Act does not suggest that the three-year reinsurance program should replace commercial reinsurance or internal risk mitigation strategies. There will be a continued need for ongoing commercial reinsurance. Therefore, we proposed establishing a reinsurance cap set at a level approximately equal to the attachment point for traditional commercial reinsurance.

In paragraph (b)(1) (now paragraph (c)), we proposed that the reinsurance payment amount be a percentage of those costs above an attachment point and below a reinsurance cap. However, we believe States may have unique situations, and will permit a State that establishes a reinsurance program to establish its own payment formula by varying the attachment point, coinsurance rate, and reinsurance cap. The preamble to the proposed rule contains a further discussion of the reasoning and background behind the policy proposed in paragraph (b)(1).

We proposed using medical cost experience to identify eligible enrollees for which health insurance issuers would receive reinsurance. This approach for calculating reinsurance payments considers costs only for high-risk individuals. However, use of a reinsurance cap, as well as the fact that a health insurance issuer pays only a portion of costs above the attachment point and below the cap, may incentivize health insurance issuers to control costs.

We proposed in paragraph (b)(2) (now moved to § 153.220(f)(2)(ii)), that all payments to the general fund of the U.S. Treasury be made on a frequency to be determined by HHS. We have also considered the frequency with which payments should be made to the U.S. Treasury. For example, the applicable reinsurance entities could remit payment on a monthly or quarterly basis commencing February 28, 2014 and continuing through January 31, 2017 or until States have remitted the full amount of all payments. We proposed in paragraph (c) (now paragraph (d)), to allow some degree of State variation from the reinsurance parameters proposed by HHS. We proposed in paragraph (c)(1) (now paragraph (d)(1)), that the State may alter the attachment point, reinsurance cap, including elimination of the cap, and coinsurance rate. We proposed in paragraph (c)(2) (now paragraph (d)(2)), that States must publish any modification to the reinsurance payment formula and parameters in a State notice of benefit and payment parameters as described in subpart B of this part. We proposed in paragraph (c)(3) (now paragraph (d)(3)), that the State must ensure that all proposed alterations to the reinsurance formulas proposed by HHS, including payments and contributions, result in the applicable reinsurance entity having sufficient contributions to meet all of its obligations for payments. These alterations to reinsurance parameters do not require HHS approval.

We believe that a State may have many reasons to make adjustments to the HHS reinsurance payment formula. First, the State may decide to increase reinsurance payments above the levels established by HHS. Second, the State may have additional unexpended funds from a prior contribution period and may seek to adjust the reinsurance formulas to disburse the unexpended funds. Finally, the State may elect to pay the same amounts recommended by HHS, but may wish to modify the frequency of those payments.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions, with the following modifications:

In paragraph (a), we are no longer requiring that payment be linked to the coverage of essential health benefits. In paragraph (b), we are clarifying that the States must use, subject to any modifications made pursuant to paragraph (d), the payment formula and values for the attachment point, reinsurance cap, and coinsurance rate for each year commencing in 2014 and ending in 2016, established in the annual HHS notice of benefit and payment parameters for the applicable benefit year. We are removing paragraph (b)(2) due to the new policy on collections and payments to the U.S. Treasury set forth in § 153.220. We are revising paragraph (c)(3) (now paragraph (d)(3)), to clarify that any State modification to the reinsurance payment formula pursuant to paragraph (d)(1) must be reasonably calculated to ensure that contributions received toward reinsurance are sufficient to cover payments that the applicable reinsurance entity is obligated to make under that State formula for the given benefit year for the reinsurance program. We are making a number of clarifying modifications throughout this section.

Comment: We received a number of comments that emphasized that reinsurance programs typically are tied not to underlying conditions that lead to high enrollee medical costs, but to claims costs beyond a specific dollar threshold within a coverage period, regardless of enrollees' health condition. Several commenters stated that coverage of specific conditions under a reinsurance program could lead to discriminatory practices toward certain individuals, with one commenter noting

that identifying medical conditions as a basis for reinsurance payments would require more extensive verification than usually required by traditional reinsurance. Another commenter stated that reinsurance that makes payments based solely on incurred costs does not encourage efficient and effective care.

Response: We are finalizing the provisions that base reinsurance payments on total claims costs, rather than specific diagnoses. We believe that because reinsurance payments are likely to only reimburse a portion of claims costs above the attachment point and will pay no costs above the reinsurance cap, there will still be incentives for an issuer to encourage efficient and effective care.

Comment: We received a few comments suggesting that States be permitted to use one of the other approaches proposed by the American Academy of Actuaries for determining eligible individuals for reinsurance.

Response: In consultation with HHS, the American Academy of Actuaries proposed four approaches for determining eligible individuals for the reinsurance program, described in the preamble to the proposed rule. From those proposals, we selected the approach based on total claims costs. We believe that permitting States the flexibility to select one of the other American Academy of Actuaries approaches would unnecessarily burden issuers operating in multiple States. Because reinsurance is a transitional program, we wish to avoid that additional burden on issuers, and are finalizing the proposed policy that uses total claims cost.

Comment: We received many comments supporting our proposed approach for calculating reinsurance payments based on the use of an attachment point, coinsurance rate, and reinsurance cap. One commenter expressed concern that the proposed approach may reduce the incentive to control costs.

Response: We understand the concerns regarding cost control. However, since issuers are likely to not be fully reimbursed under the reinsurance program for claims costs above the attachment point, we believe that they will continue to have an incentive to control costs.

Comment: We received a comment asking for clarification on whether reinsurance payments are made on an incurred basis.

Response: As indicated in the proposed definitions for ''attachment point,'' ''coinsurance rate,'' and ''reinsurance cap,'' we intend for claims costs to be measured on an incurred basis for purposes of calculating reinsurance payments.

5. Disbursement of Reinsurance Payments (§ 153.240)

In § 153.240, we proposed parameters for the timing of reinsurance payments. In paragraph (a) of this section, we proposed that States must ensure that the applicable reinsurance entity collects from health insurance issuers of reinsurance-eligible plans data required to calculate payments described in § 153.230, according to the data requirements and data collection frequency specified by the State in the State notice of benefit and payment parameters described in subpart B, or in the annual HHS notice of benefit and payment parameters.

In paragraph (b), we proposed that a State must ensure that each applicable reinsurance entity makes payments that do not exceed contributions and makes payments to health insurance issuers of reinsurance-eligible plans according to § 153.230. We also proposed in paragraph (b)(2) (now paragraph (b)(1)), to allow a State to reduce payments on a pro rata basis to match the amount of contributions received by the State in a given reinsurance year, and to require that pro rata reductions made by the State be made in a fair and equitable manner for all health insurance issuers in the individual market.

In paragraph (b)(3) (now paragraph (b)(2)), we proposed that a State be required to ensure that an applicable reinsurance entity make payments as specified in § 153.410(b) to the issuer of a reinsurance-eligible plan after receiving a valid claim for payment. Finally, in paragraph (c), we proposed that for each benefit year, the State be required to maintain all records related to the reinsurance program for 10 years, consistent with requirements for record retention under the False Claims Act.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions with the following modifications:

We are clarifying in paragraph (b) that the State must ensure that each applicable reinsurance entity does not make reinsurance payments that exceed contributions received to date. We are removing paragraph (b)(1) because those requirements are covered in § 153.230 and paragraph (b)(2) (formerly paragraph (b)(3)). We are clarifying in paragraph (b)(1) (formerly paragraph (b)(2)), that if a State, or HHS on behalf of the State, determines that reinsurance payments requested for a calendar year will likely exceed the reinsurance contributions that will be received for the year, the State, or HHS on behalf of the State, may reduce reinsurance payments, so long as the manner in which payments are reduced is fair and equitable for all health insurance issuers in the individual market. We are making a number of clarifying modifications throughout this section.

Comment: We received many comments related to the timing of reinsurance payments. Some commenters asked that States be provided flexibility in determining payment timeframes. A few commenters suggested that contributions be collected monthly, but that payments be made quarterly. One commenter suggested providing early funds to small carriers to cover potential cash flow shortfalls.

Response: We recognize the importance of providing issuers with reinsurance payments in a timely manner, but we believe it is prudent to maintain flexibility in payment timing to ensure that sufficient contributions are available to fund those payments. We are finalizing the proposal permitting States to establish the payment timeframe in the State notice of benefit and payment parameters described in subpart B. For reinsurance programs established by HHS on behalf of the State, HHS will publish the payment timeframe in the HHS notice of benefit and payment parameters. We anticipate that States will take into account the cash flow needs of small issuers in setting the reinsurance payment timeframes.

Comment: We received several comments suggesting that HHS prohibit health insurance issuers from passing reinsurance payment shortfalls on to providers.

Response: We understand the concern raised by the commenters, and we encourage providers to work with plan issuers concerning this matter.

Comment: We received several comments on the duration of the record maintenance requirement. Commenters suggested retention requirements ranging from two to fifteen years, with many commenters suggesting a five-year period.

Response: We believe that the record retention requirements for reinsurance should be consistent with other Federal record retention requirements, and are finalizing the proposed provision that requires records to be retained for ten years, as explained above.

6. Coordination With High-Risk Pools (§ 153.250)

In § 153.250(a) of the proposed rule, we proposed to codify in regulation section 1341(d) of the Affordable Care

Act, which requires that States eliminate or modify high-risk pools to the extent necessary to carry out the reinsurance program. In paragraph (a), we proposed to codify in regulation the above-referenced section. In paragraph (b), we proposed to permit a State that continues its high-risk pool to coordinate its high-risk pool with its reinsurance program to the extent it conforms with the provisions of this subpart.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions with no modifications.

Comment: We received several comments recommending that high-risk pools be permitted to be offered as individual market plans eligible for reinsurance. One commenter requested that reinsurance contributions be used to fund the costs of operating State high-risk pools during the three-year period. Several commenters suggested not combining reinsurance funds with funds for high-risk pools, and opposed permitting high-risk pools to receive reinsurance payments.

Response: We clarify in § 153.400 that State high-risk pools are excluded from contributions and payments. We clarify, as we did in the proposed rule, that none of the funds collected for reinsurance can be used for any purpose other than for making payments under the reinsurance program or for administering that program. We understand the concerns of some commenters regarding the transition of high-risk pool participants and point out that the Exchanges will work with State high-risk pools to ensure a smooth transition and continuity of care for these enrollees. We believe that the reinsurance program, along with the risk adjustment and risk corridors programs, were designed in anticipation of new high-cost enrollees, some of whom may currently be receiving coverage through State high-risk pools.

Comment: We received a comment suggesting coordination between PCIP and the transitional reinsurance program.

Response: Section 1101 of the Affordable Care Act requires coordination between PCIP and the Exchanges. To the extent that individuals previously enrolled in PCIP enroll in reinsurance-eligible plans, issuers will have access to the reinsurance program for these enrollees.

D. Subpart D—State Standards Related to the Risk Adjustment Program

In subpart D, we proposed standards for States with respect to the risk adjustment program required under section 1343 of the Affordable Care Act. Parallel provisions for health insurance issuers were proposed in subpart G of this part. Section 1343 provides for a program of risk adjustment for all non-grandfathered plans in the individual and small group market both inside and outside of the Exchange. The risk adjustment program is intended to reduce or eliminate premium differences between plans based solely on expectations of favorable or unfavorable risk selection or choices by higher risk enrollees in the individual and small group market. The risk adjustment program also serves to level the playing field inside and outside of the Exchange, reducing the potential for excessive premium growth or instability within the Exchange. We interpret section 1343 to mean that risk pools must be aggregated at the State level, even if a State decides to utilize regional Exchanges. Furthermore, section 1343(c) indicates that risk adjustment applies to individual and small group market health insurance issuers of non-grandfathered plans within a State, both inside and outside of the Exchange. Accordingly, similar to our approach in reinsurance, if multiple States contract with a single entity to administer risk adjustment, risk may not be combined across State lines, but must be pooled within each State.

1. Reserved (§ 153.300)

Section 153.300 of the proposed rule defined a number of terms used in this subpart. Those definitions have been moved to subpart A. We are reserving this section for future use.

2. Risk Adjustment Administration (§ 153.310)

In this section, in paragraph (a)(1), we specified that any State electing to establish an Exchange is eligible to establish a risk adjustment program. Pursuant to section 1321(c)(1) of the Affordable Care Act, we proposed in paragraph (a)(2) that for States that do not operate an Exchange, HHS will establish a risk adjustment program. We also clarified in paragraph (a)(3) that HHS will administer all of the risk adjustment functions for any State that elects to establish an Exchange but does not elect to administer risk adjustment. We are finalizing this provision, with a number of clarifying modifications.

Comment: Many commenters supported permitting States to defer operation of a risk adjustment program to HHS. One commenter recommended that any State should be eligible to operate a risk adjustment program, whether or not the State is establishing an Exchange.

Response: An effective risk adjustment program is critical to prevent adverse selection and stabilize premiums inside and outside the Exchanges. Developing a risk adjustment program is methodologically and operationally complex. We believe that, particularly in the initial years, States may wish to defer risk adjustment operation to HHS in order to focus resources on establishing Exchanges. We are therefore finalizing these provisions to provide States the option to operate risk adjustment if they establish Exchanges. Because we believe that the Federally Facilitated Exchange should be operated in coordination with a risk adjustment program that is closely tied to its implementation, States not operating Exchanges and States entering into a partnership with or relying entirely on the Federally Facilitated Exchange will not be permitted to operate a risk adjustment program. We will clarify in future guidance the process through which a State will notify HHS of its choice to operate risk adjustment if it establishes an Exchange beginning in 2014 or any subsequent year.

In paragraph (b), we clarified that a State may elect to have an entity other than the Exchange perform the risk adjustment functions of this subpart, provided that the selected entity meets the requirements for eligibility to serve as an Exchange set forth in § 155.110 of the proposed Exchange Establishment rule. Considering the comments received, we are finalizing this provision, noting that the definition of an entity eligible to serve as an Exchange has been modified from the proposed definition.

Comments: Commenters offered varying opinions regarding the requirements for entities to be eligible to administer risk adjustment. Several commenters urged HHS to include stronger provisions prohibiting conflicts of interest. Those commenters stated that all members of the board of a risk adjustment entity should be free of financial ties to issuers, and that consumer representation on the board should be required. One commenter believed that an entity's eligibility to be a risk adjustment entity should be based on the entity's experience, and not on the requirements governing entities carrying out Exchange functions. Other commenters stated that the requirements on entities eligible to administer risk adjustment and carry out Exchange functions were overly restrictive, noting that the requirements would exclude State regulators, such as a State Department of Insurance. This commenter asked that the regulator in

each State be eligible to administer risk adjustment. Two commenters suggested that entities be eligible to administer both risk adjustment and reinsurance.

Response: We believe that a State may have a single entity administer reinsurance and risk adjustment, provided that the entity meets the separate requirements to administer both programs. We note that to be eligible to administer reinsurance, an entity must meet the definition outlined in § 153.20. We also appreciate concerns that risk adjustment entities may have board members with conflicts of interest and, further, that because risk adjustment involves the transfer of money between plans, these concerns may be especially relevant for this program. We encourage States to weigh these concerns when establishing a risk adjustment entity. However, we seek, to the extent possible, consistency between the requirements to serve as a risk adjustment entity and the requirements to serve as an entity performing other Exchange functions.

In paragraph (c), we proposed timeframes for the risk adjustment process. We proposed that all payment calculations commence with the 2014 benefit year. We sought comment on the appropriate deadline by which risk adjustment must be completed each year. In response to comments, we are finalizing the standard that risk adjustment be implemented beginning with the 2014 benefit year, and are including a requirement that each issuer be notified of risk adjustment payments owed to, or charges owed by, the issuer by June 30 of the year following the benefit year. We believe that this deadline best balances the need to coordinate risk adjustment payments and charges with other programs, and the need to ensure that high quality risk adjustment data is available to support the program.

Comments: We received a number of comments recommending that risk adjustment be performed before completion of the MLR calculation process. Two commenters specified that risk adjustment should be completed by late May of the year following the benefit year in order to accommodate the Federal MLR reporting deadline of June 1. Other commenters stated that it would be difficult to coordinate risk adjustment payments with MLR reporting. Two commenters suggested extending the MLR deadline for 2014 through 2016. One commenter suggested delaying the implementation of risk adjustment until 2016.

Response: The risk adjustment process relies in part on high quality claims data. Allowing for claims run-out after the benefit year increases the amount and quality of claims data because issuers will have more time to receive, review and pay claims made during the benefit year. Better quality data will lead to more accurate risk scores, which ultimately feed into the calculation of plan average actuarial risk and the calculation of payments and charges.

In the preamble to the proposed rule, we discussed requiring that States complete the risk adjustment process by June 30 of the year following the benefit year, or June 30, 2015 for the benefit year 2014. States would be free to set a payment schedule (including interim payments throughout the benefit year), but would be required to comply with the June 30 deadline. Many commenters agreed that June 30 was a reasonable deadline for completion of the risk adjustment process. We have included in the final rule a June 30 deadline for the completion of the risk adjustment process. We believe that 6 months following the benefit year is a reasonable timeframe to complete the risk adjustment process.

The deadline to submit MLR reports to the Federal government is June 1 of the year following the calendar year experience being reported. MLR calculations must take into account risk adjustment payments and charges. We recognize that our proposed deadline is inconsistent with the current Federal MLR reporting deadline, but believe that allowing sufficient time to collect quality data to support risk adjustment is extremely important and would be extremely difficult to complete within current MLR timeframes. We will work to resolve this issue prior to 2014.

Comments: A few commenters suggested that risk adjustment payments be made quarterly, with the final payment to be made after the first quarter of the year following the benefit year.

Response: We believe that States should have the flexibility to set a payment schedule that best suits their program administration. Therefore, we did not include a requirement that States adhere to a specific payment schedule.

In the preamble to the proposed rule, we discussed our belief that States should provide HHS with a summary report of risk adjustment activities for each benefit year in the year following the calendar year covered in the report. The final rule directs States to submit an annual summary report of their program. We believe that this report will permit States to learn from other States' experience and will help HHS evaluate the implementation of the risk adjustment program. We will specify the contents of the report in future guidance, but expect the report would include information such as plan average actuarial risk score and the risk adjustment payment or charge for each risk adjustment covered plan in the State, trends in risk scores over time, evidence of upcoding, and other risk adjustment-related elements. We expect that States will make summary reports publicly available. We believe this report will facilitate periodic evaluation, oversight, and continuous improvement of the risk adjustment program.

Comment: Several commenters supported the concept of providing summary reports. However, one commenter was unwilling to fully support the requirement until knowing the content that would be required in the report. Two commenters suggested that the report include the average actuarial risk for each plan, the risk adjustment charge or payment for each plan, and information on risk scores and cost trends, including evidence of upcoding and error rates determined under the most recently completed risk adjustment data validation audits. We also received comments requesting that HHS require that State risk adjustment entities report information about their States' risk adjustment program to issuers. Finally, we received one comment suggesting that all funds collected by the risk adjustment entity be required to be used only in connection with the risk adjustment program.

Response: Annual summary reports can serve as a tool for States and HHS to monitor and evaluate State programs across the country. HHS will also be able to use the reports to provide technical assistance to States administering risk adjustment programs when needed. The technical assistance will serve not only to improve a State's risk adjustment program, but will reduce the burden on each State to evaluate and improve its risk adjustment program. The information in the annual reports will also be useful in evaluating the implementation of the Federally developed risk adjustment methodology and other Federally certified risk adjustment methodologies. For these reasons, we have added paragraph (d) to this final rule to ensure that States submit annual risk adjustment program reports to HHS.

3. Federally Certified Risk Adjustment Methodology (§ 153.320)

Section 1343(b) of the Affordable Care Act requires HHS to establish criteria and methods for risk adjustment in coordination with the States. We

interpret this provision to mean that HHS will establish a baseline methodology to be used by a State, or HHS on behalf of the State, in determining plan average actuarial risk. In § 153.300 of the proposed rule, we defined the risk adjustment methodology as encompassing the risk adjustment model, the calculation of plan average actuarial risk, and the calculation of payments and charges.

We proposed in paragraph (a)(1) that a Federally certified risk adjustment methodology be developed by HHS. We proposed in paragraph (a)(2) that a State-submitted alternate risk adjustment methodology may become a Federally certified risk adjustment methodology through HHS certification. For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions, with certain clarifying modifications.

Comments: One commenter requested clarification on when State alternate methodologies would be required to be submitted and would be evaluated. Multiple commenters expressed a preference that State and Federal methodologies be announced early enough to give sufficient time for issuers to incorporate anticipated risk adjustment payments or charges into their rates.

Response: While the proposed timing necessitates a short window for submission and evaluation of the alternate risk adjustment methodologies, the timeframe permits a State to evaluate the methodology proposed by HHS in the proposed annual HHS notice of benefit and payment parameters. This timeframe also permits HHS to publish all certified methodologies at one time in the final annual HHS notice of benefit and payment parameters. In future years, HHS will evaluate whether it should accept and evaluate applications for alternate risk adjustment methodologies on an earlier timeframe. However, in the initial year, the HHS methodology will likely not have been fully developed in time to benchmark alternate risk adjustment methodologies on an earlier timeframe.

We proposed in paragraph (b)(1) of this section that a State that is operating a risk adjustment program must use one of the Federally certified risk adjustment methodologies that HHS will publish in an annual HHS notice of benefit and payment parameters. We proposed that State notices of benefit and payment parameters include a full description of the risk adjustment model, including, but not limited to: (1) Demographic factors, diagnostic factors, and utilization factors (if any); (2) the qualifying criteria for establishing that an individual is eligible for a specific factor; (3) the weights assigned to each factor; and (4) the schedule for the calculation of individual risk scores. We sought comments on other information that should be included in this notice. In paragraph (b)(2), we proposed that the risk adjustment methodology will also describe any adjustments made to the risk adjustment model weights when calculating average actuarial risk, including premium rating variation.

Considering the comments received, we are finalizing this provision, with the following modifications: We are clarifying that notices must also include a description of the calculation of plan average actuarial risk, a description of the calculation of payments and charges, and a description the risk adjustment data collection approach. We are also including a number of other clarifying modifications.

Comments: We received several comments supporting a structure in which HHS will develop a risk adjustment methodology but States have the option to submit alternate methodologies for approval by HHS. Several commenters preferred that HHS establish one national methodology. Other commenters suggested that States be required to justify deviation from the methodology developed by HHS. Two commenters believed that HHS approval of State methodologies was unnecessary, and that any State alternate methodology should be deemed certified and available to all States. Some commenters suggested that all methodologies be subject to notice and comment.

Response: We recognize that States may wish to employ alternate risk adjustment methodologies, and believe that alternate approaches could achieve results similar to those that will be achieved by the methodology developed by HHS. We agree that States should submit a rationale for their proposed alternate methodology for certification. We are therefore finalizing the proposed rule, which required publication of a rationale, with a number of clarifying modifications. HHS will develop a Federal risk adjustment methodology, and States that wish to deviate from that methodology may submit an alternate methodology to HHS for approval. States must specify in their State notice of benefit and payment parameters which of the Federally certified methodologies published in the annual HHS notice of benefit and payment parameters they will use. We believe that the publication of the Federal methodology in a notice of benefit and payment parameters addresses certain commenters' desire that interested parties be given opportunity to comment on the methodology proposed by HHS. HHS will provide an opportunity for public comment when it administers risk adjustment on behalf of a State. State law will govern what administrative process is necessary when a State adopts a risk adjustment methodology, subject to the limits of this final rule and the annual HHS notice of benefit and payment parameters.

In paragraph (c), we proposed that HHS will specify in the annual HHS notice of benefit and payment parameters the Federally certified risk adjustment methodology that will apply when HHS operates the risk adjustment program. We are finalizing this provision, with a number of clarifying modifications.

The statute is not specific with respect to the method by which States are expected to determine the precise value of payments and charges, so we requested comment on two payments and charges methodologies and whether there are alternate methodologies that might be used. We received a number of comments requesting consistency in methodology from State to State. Therefore, we plan to establish a national method for the calculation of payments and charges that States may not vary. A national method for the calculation of payments and charges ensures a degree of consistency in the risk adjustment program from State to State while allowing States to vary certain elements of the program.

Comments: Many commenters recommended that HHS establish one national methodology or limit States' ability to deviate from the methodology developed by HHS. Other commenters supported giving States the flexibility to propose alternate methodologies so long as those methodologies are as robust as the one proposed by HHS.

Response: The calculation of payments and charges requires selection of a baseline premium, for example, a plan average or State average premium. That premium basis is multiplied by the plan average actuarial risk to calculate risk adjustment payments or charges, and requires balancing if payments do not equal charges. Thus, the calculation of payments and charges affects the amount of funds transferred from low-risk to high-risk plans, and can affect premiums in low-risk and high-risk plans.

Although a national standard methodology for calculating payments and charges provides a degree of consistency from State to State, we recognize it may also limit States' ability

to implement novel methodologies. We believe that there may be potential to introduce State variation in the calculation of payments and charges in the future. We also believe that requiring a national methodology for calculating payments and charges initially, and leaving open the possibility of permitting State variation in later years, relieves States from the burden of developing such a methodology in the first year, and provides a starting point for States seeking to create alternate methodologies in later years.

4. State Alternate Risk Adjustment Methodologies (§ 153.330)

We proposed allowing States to utilize alternate risk adjustment methodologies, provided that States taking advantage of this flexibility submit their proposed alternate risk adjustment methodologies for HHS review and certification. We proposed in paragraph (a)(1) the information about the State's proposed risk adjustment methodology that the State must include in its request for certification. In paragraph (a)(2), we proposed that all requests include information relating to certain criteria to be used in the evaluation of the request.

For the reasons described in the proposed rule, and considering the comments received, we are finalizing these provisions with the following modifications: We are including new language requiring States to provide a description of the risk adjustment methodology. This change aligns this provision with changes made to § 153.320 discussed above. We are also making a number of clarifying modifications throughout this section.

Comments: Several commenters requested greater specificity about the validation requirements for the proposed alternate risk adjustment methodologies. One commenter requested that HHS permit States to vary payments based on whether a plan participates in the Exchange or the Small Business Health Options Program. Another commenter suggested that States be permitted to vary payments based on whether the issuer implements programs to improve population health. Other commenters suggested other requirements for certification of alternate risk adjustment methodologies. For example, one commenter recommended requiring that an alternate methodology include either a separate model for pediatrics or demonstrate the model's effectiveness in pediatric populations. Another commenter recommended requiring States to specify how they will move from a retrospective to a prospective risk adjustment approach. A number of commenters supported use of a prospective approach, while others favored a retrospective approach. Some commenters supported a diagnosis-based risk adjustment model, while others favored a demographic approach. One commenter suggested that a survey-based approach be utilized.

Response: We anticipate that a number of different approaches could receive Federal certification. HHS will provide further details on the process for receiving Federal certification for alternate risk adjustment methodologies in the draft annual HHS notice of benefit and payment parameters. State alternate methodology requests will be accepted up to 30 days after publication of the draft annual HHS notice of benefit and payment parameters, and alternate methodologies that are certified by HHS will be published in the final HHS notice of benefit and payment parameters.

In paragraph (b), we proposed that a State that operates a risk adjustment program must renew HHS certification of alternate risk adjustment methodologies whenever changes occur, including at the time of recalibration, which the State must identify when initially requesting certification for the alternate risk adjustment model. Considering the comments received, we are finalizing this provision with the following modifications: We are including language clarifying that the need to obtain recertification of a recalibrated risk adjustment model applies to any alteration to the Federally certified risk adjustment methodology.

Comment: We received two comments supporting a requirement that States wishing to recalibrate or otherwise change their methodology submit that change to HHS for approval.

Response: We are finalizing this policy.

5. Data Collection Under Risk Adjustment (§ 153.340)

As described above, a robust risk adjustment process requires data to support the determination of an individual's risk score and the plan and State average actuarial risk. In paragraph (a), we proposed that a State, or HHS on behalf of the State, be responsible for collecting data for use in the risk adjustment program. HHS considered three possibilities for data collection: (1) A centralized approach in which issuers submit raw claims data sets to HHS; (2) an intermediate State-level approach in which issuers submit raw claims data sets to the State government or the entity responsible for administering the risk adjustment process at the State level; and (3) a distributed approach in which each issuer must reformat its own data to map correctly to the risk assessment database, and then pass on individual risk scores to the entity responsible for assessing risk adjustment charges and payments.

Considering the comments received, we are modifying this paragraph as follows: Rather than specify an intermediate risk adjustment data collection approach, we are permitting States that elect to operate a risk adjustment program to choose the risk adjustment data collection approach that best suits their program. HHS will use a distributed approach when operating risk adjustment on behalf of a State. Because a distributed approach to data collection has not been implemented on this scale, we plan to evaluate the implementation and may make changes to the approach based on that evaluation. We are including a requirement that States operating risk adjustment collect or calculate, at a minimum, individual risk scores. This requirement minimizes the collection of sensitive data while allowing States to calculate rating variation adjustments and payments and charges. We are modifying the privacy and security standards applicable when a State is operating risk adjustment. Protecting the privacy and confidentiality of an individual's personal health information continues to be among HHS' highest priorities. Under a distributed approach, issuers will need to format risk adjustment data, maintain that data in a manner that complies with State or HHS specifications, and in some cases run risk adjustment software. In addition, a State, or HHS on behalf of the State, will not be required to collect claims data; however, the data validation and audit process will be more involved.

Comments: We received a large number of comments on the collection of risk adjustment data, including many comments supporting HHS' proposed collection of risk adjustment data at the State level. A number of other commenters expressed concern for patient privacy under the proposed method of data collection. Some of those concerned about patient privacy did not explicitly oppose the proposed risk adjustment data collection approach, but encouraged HHS to collect de-identified data or carefully consider privacy and security standards, such as techniques to mask or encrypt data. We received many comments in favor of a distributed approach to risk adjustment data collection. These comments focused on the administrative complexity of transmitting claims data

to HHS and the risk of exposing private information and competitively sensitive data, such as unit prices for medical services. Another commenter suggested that States be given flexibility to choose which risk adjustment data collection approach to use when operating risk adjustment.

Response: The transmission by issuers to HHS and the storage by HHS of large amounts of sensitive data pose potential risks to consumer privacy. A distributed approach would leverage the existing data infrastructure of issuers, potentially saving Federal and issuer resources. For these reasons, HHS will utilize a distributed approach to collecting risk adjustment data when operating risk adjustment on behalf of a State.

We considered requiring that all States utilize a distributed approach to risk adjustment data collection, as HHS will do. However, we believe that requiring a particular approach runs counter to the flexibility generally afforded States by the Affordable Care Act and HHS.

We proposed in paragraph (b) that the State, or HHS on behalf of the State, use standard HIPAA transaction standards when collecting data. We proposed in paragraphs (b)(1) and (b)(2) to require States to utilize two specific HIPAA transaction standards for risk adjustment data collection. In paragraph (b)(3), to address consumer privacy concerns, we proposed that States must utilize specific privacy standards in their data collection risk adjustment procedures.

Considering the comments received, we are modifying this paragraph as follows: We are including a requirement that States require issuers to comply with the data privacy and security standards set forth in the State's notice of benefit and payment parameters.

Because we maintain the flexibility for States that operate risk adjustment programs to choose their data collection approaches, we are including a requirement that States limit their collection to the information reasonably necessary to operate the risk adjustment program. For example, a State could not collect an enrollee's name, because that information would not be reasonably necessary to operate the risk adjustment program. We are prohibiting a State from collecting or storing any personally identifiable information for use as a unique identifier for an enrollee's data, unless that information is masked or encrypted by the issuer, with the key to that masking or encryption withheld from the State. The term ''personally identifiable information'' is a broadly used term across Federal agencies, and has been defined in the Office of Management and Budget Memorandum M–07–16. In order to reduce duplicative guidance or potentially conflicting regulatory language, we are not defining personally identifiable information in this final rule, and incorporate the aforementioned definition into this final rule.

The privacy and security standards outlined above reflect the changes in the risk adjustment data collection approach in paragraph (a) of this section. We note that these standards should be read to represent a minimum standard to be used in the risk adjustment program. We expect that States will build on these minimum privacy and security standards when establishing a risk adjustment data collection program.

Comment: We received a number of comments about privacy concerns associated with the proposed collection of risk adjustment data. Some commenters believed that HHS should finalize a requirement that any risk adjustment data collected be de-identified. Others preferred that data not be collected.

Response: We are committed to applying strong privacy and security standards to risk adjustment data collected by States or HHS on behalf of a State. We are amending the proposed privacy and security standards so that States that limit their collection of personally identifiable information to that which is reasonably necessary to carry out their risk adjustment methodology. In paragraph (b)(4), we require States to implement security standards that provide administrative, technical, and physical safeguards consistent with the standards described in the HIPAA Security Rule at 45 CFR 164.308, 164.310, and 164.312. We recognize that the specific requirements for data collection may vary depending on the amount and type of data States choose to collect, and thus we decided to permit States to design security requirements to accommodate these requirements. This final rule does not preclude States from implementing stricter security standards, particularly if they choose to collect additional risk adjustment data. HHS will not be collecting the claims data from issuers needed to run the risk adjustment methodology when HHS runs risk adjustment on behalf of a State. HHS will issue further guidance regarding the privacy and security standards applicable when HHS is operating risk adjustment on behalf of a State.

In paragraph (c), we proposed that States with existing all-payer claims databases may request an exception from the minimum standards for data collection. In paragraph (d), we proposed that the State must make certain risk adjustment data available to support other activities, including: recalibrating Federally certified risk adjustment models; verifying risk corridor submissions; and verifying and auditing reinsurance claims. We have removed paragraphs (c) and (d) because these requirements are not compatible with flexibility with regard to risk adjustment data collection. In the proposed rule and preamble, we discussed a number of ways risk adjustment data could be used to support other programs such as verifying risk corridor submissions, reinsurance payments, cost-sharing reductions, and quality improvement efforts. We are continuing to explore how to obtain the data needed to support these programs. We anticipate working closely with States and issuers to efficiently gather or access the data needed to support these programs.

Comments: We received a few comments requesting that existing data collection initiatives such as all-payer claims databases be utilized to the fullest extent possible to support risk adjustment.

Response: A State operating a risk adjustment program may choose to utilize all-payer claims databases, provided that the State complies with the requirements set forth in this paragraph.

Comments: We received several comments supporting the use of risk adjustment data for other Affordable Care Act purposes. Two commenters were wary of permitting access to data for uses beyond risk adjustment because they view the data as sensitive and wish to limit Federal access to it.

Response: We believe that HHS' use of a distributed approach for risk adjustment addresses many concerns regarding centralized data collection of risk adjustment data. We are currently exploring options to collect the information needed for other purposes. We believe that States administering a risk adjustment program should, to the extent possible, seek efficiencies in data collection across programs.

6. Risk Adjustment Data Validation Standards (§ 153.350)

In § 153.350, we proposed that States have a reliable data validation process, which is essential to the establishment of a credible risk adjustment program. In paragraph (a), we proposed that the State, or HHS on behalf of the State, validate a statistically valid sample of all issuers that submit data for risk adjustment every year. In paragraph (b), we proposed that the State, or HHS on

behalf of the State, be permitted to adjust the average actuarial risk for each plan based on the error rate found in the validation. In paragraph (c), we proposed that the State, or HHS on behalf of the State, be permitted to adjust payments and charges based on the changes to average actuarial risk. Finally, in paragraph (d), we proposed that the State, or HHS on behalf of the State, be required to provide an appeals process for issuers.

Considering the comments received, we are finalizing this provision, with the following modifications: We are expanding the data validation requirements to include requirements applicable to a distributed risk adjustment data collection approach, and are making a number of clarifying modifications throughout this section.

Comments: We received several comments on data validation. We received a number of comments supporting the proposed data validation requirements. For the most part, commenters supported data validation requirements for every issuer offering risk adjustment covered plans in a State. A few commenters suggested that HHS add requirements on States, establish a national validation methodology, or perform the validation itself.

One commenter suggested that States be allowed to establish minimum values, under which annual data validation would not be required. For example, issuers with fewer than 5,000 members and less than 1 percent of the overall market would not be required to validate data annually; instead, these issuers would be required to validate data every 2 or 3 years.

Response: We believe that the data validation standards we are finalizing represent appropriate minimum standards. We believe that annual data validation for all issuers is necessary to ensure a robust risk adjustment program, and so do not believe that minimum values for annual data validation or data validation that occurs less frequently are appropriate.

Comment: We also received a number of comments about the specific data validation methodology or process. Several commenters suggested that data validation be completed throughout the year and certified at the end of the year. One commenter suggested including a requirement that data validation be maintained for the duration of risk adjustment operation. One commenter suggested that diagnoses identified by health care providers apply even if, upon subsequent audit, HHS determines that the patient's medical records did not support the provider's diagnosis. One commenter urged that States be required to design risk adjustment data validation standards using a methodology similar to that used under the CMS-Hierarchical Condition Category system.

Response: We believe that a State should have the discretion to design its risk adjustment program, including the method for data validation. Given that risk adjustment occurs at the State level, the possibility of differences from State to State do not present a significant problem. For this reason, we are finalizing the data validation requirements with the modifications described above.

Comment: We received one comment suggesting that we insert the phrase ''or HHS on behalf of the State'' in paragraph (c).

Response: In the preamble to the proposed rule, we proposed ''that the State, or HHS on behalf of the State, adjust payments and charges based on the changes to average actuarial risk.'' However, the phrase ''or HHS on behalf of the State'' was omitted from the proposed regulation text in paragraph (c). We are amending the final rule text to be consistent with § 153.350(a) and (b) of, and the preamble to, the proposed rule.

E. Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program

In subpart E of the proposed rule, we proposed standards for health insurance issuers that complemented the standards for the transitional reinsurance program more fully described in the preamble to subpart C of the proposed rule. Subpart C discussed standards of the program applicable to States. In subpart E, we discussed the standards applicable to health insurance issuers and self-insured group health plans.

1. Reinsurance Contribution Funds (§ 153.400)

In § 153.400, we proposed to codify in regulation section 1341 of the Affordable Care Act, which requires that the reinsurance program be funded by contribution funds from contributing entities. In paragraph (a), we proposed that all contributing entities make contributions, in a frequency and manner to be determined by the State or HHS, to the applicable reinsurance entity in the State. In paragraph (b), we proposed that if the State establishes multiple applicable reinsurance entities, the contributing entity must contribute an appropriate payment to each applicable reinsurance entity. We proposed in paragraph (c) (now paragraph (d)), that contributing entities be required to provide the data necessary for the applicable reinsurance entity to calculate the amounts due from each contributing entity.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions, with the following modifications:

We are clarifying in paragraph (a) that a contributing entity must make contributions for all reinsurance contribution enrollees who reside in a State at the national rate and any additional contribution rate if a State elects to collect additional contributions. We are adding paragraph (a)(1), which clarifies that all contributing entities must make reinsurance contributions on behalf of all group health plans and health insurance coverage they represent except those set forth in paragraph (a)(2). For example, contributing entities are required to make reinsurance contributions on behalf of plans in the Federal Employee Health Benefit Program, State and local government employee plans, and grandfathered health plans. The Affordable Care Act requires these issuers and third-party administrators on behalf of self-insured plans to make reinsurance contributions.

In paragraph (a)(2), we are clarifying that contributing entities are not required to make contributions on behalf of plans or health insurance coverage that consists solely of excepted benefits within the meaning of section 2791(c) of the PHS Act. Section 1341(b)(3)(B)(i) of the Affordable Care Act requires the contribution amount for an issuer to be based on the issuer's fully insured commercial book of business for all major medical products. Issuers of certain plans are excluded from making reinsurance contributions because those plans are not ''commercial books of business'' or ''major medical'' products. Thus, private Medicare and Medicaid plans and Federal and certain State high-risk pools are exempt from making reinsurance contributions because they are not a ''commercial book of business.'' Further, stand-alone vision and dental plans and other plans defined as excepted benefits within the meaning of section 2791(c) of the PHS Act are exempt because they are not ''major medical'' products.

In a new paragraph (c), we are requiring that each contributing entity submit contributions due to the Federal applicable reinsurance entity on a quarterly basis beginning January 15, 2014. We believe this timeframe is consistent with industry practice and will allow for timely transfer of

contribution funds to States and the U.S. Treasury. We believe that States should have the flexibility to set the frequency of collections by the applicable reinsurance entity.

In a new paragraph (d), we are clarifying that each contributing entity must submit to HHS and each applicable reinsurance entity, if the State elects to collect reinsurance contributions, data required to substantiate contribution amounts, in the format and with the timing specified by the State or HHS. For example, HHS may request this data in the form of a report that specifies the number of reinsurance contribution enrollees covered by a plan in each State in a month.

Comment: We received a number of comments requesting clarification as to whether certain types of plans, such as multi-State plans and CO–OP plans, are contributing entities.

Response: We believe that section 1341(b)(1)(A) of the Affordable Care Act directs a broad cross-section of issuers and self-insured plans to make reinsurance contributions, given the uncertainty of the size and characteristics of the population that will participate in the Exchanges. We discuss whether certain plans are required to make reinsurance contributions in the preamble above.

Comment: One commenter suggested that HHS clarify whether the Basic Health Plans described in Section 1331 of the Affordable Care Act will be subject to reinsurance contributions or eligible for reinsurance payments.

Response: Since guidance and regulations regarding the Basic Health Plans have not yet been issued by HHS, we are unable to provide direction at present on whether these plans are subject to the reinsurance program.

Comment: We received several comments recommending that reinsurance contributions be collected on a quarterly basis. One commenter recommended an annual collection.

Response: We have included a provision that requires that contributions to HHS be submitted quarterly in paragraph (c). A State that elects to collect contributions may set its own timeframe for collection. However, we encourage States to adopt a timeframe similar to the one adopted by HHS to minimize the burden on issuers in multiple States.

2. Requests for Reinsurance Payment (§ 153.410)

The reinsurance program as proposed in subpart C will make payments to reinsurance-eligible plan issuers. In paragraph (a) of the proposed rule, we proposed that reinsurance-eligible plan issuers be required to submit a request for reinsurance payment to the applicable reinsurance entity. We proposed in paragraph (b) that this request be made according to the method specified in the annual HHS notice of benefit and payment parameters.

For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions, with certain clarifying changes.

Comment: We received a comment requesting that HHS provide standards for issuers to request payment.

Response: Issuers of reinsurance-eligible plans will make requests for payment in accordance with the procedures set forth in the annual HHS notice of benefit and payment parameters. If a State establishes a reinsurance program, then it will publish guidance regarding data requirements for reinsurance payment in its State notice of benefit and payment parameters.

Comment: We received a few comments regarding the frequency of reinsurance payments. One commenter suggested a monthly reinsurance payment cycle. The commenter suggested that the reinsurance entity pay claims at 75 percent of the eligible amounts, with the remaining 25 percent of eligible claims becoming payable at the end of the year to the extent funds are available. One commenter suggested a payment process at the end of the benefit year. Another commenter suggested that reinsurance payment requests be permitted to be submitted whenever an individual claim causes a beneficiary's accumulated claims costs for the plan year to exceed the attachment point, and that adjustments be permitted to be submitted as the claim fully develops.

Response: Further guidance on the reinsurance claim and payment process will be provided in the HHS notice of benefit and payment parameters.

Comment: We received comments regarding the deadline for reinsurance payment requests and late claims. One commenter suggested that reinsurance-eligible claims be required to be submitted no more than six months after the plan year, and that claims not filed within that timeframe become ineligible for reinsurance payment. Another commenter suggested that the ability to submit late claims be restricted to ensure that late claims do not delay MLR rebates to consumers or risk corridors payments to insurers.

Response: We will provide further guidance on the deadline for requests and on late claims in the annual HHS notice of benefit and payment parameters.

F. Subpart F—Health Insurance Issuer Standards Related to the Temporary Risk Corridors Program (§ 153.500–§ 153.530)

In this subpart, we proposed requirements on health insurance issuers related to the temporary risk corridors program which section 1342 of the Affordable Care Act established for the first three years of Exchange operation (2014–2016). Risk corridors create a mechanism for sharing risk for allowable costs between the Federal government and QHP issuers. QHP issuers with allowable costs that are less than 97 percent of the QHP's target amount will remit charges for a percentage of those savings to HHS, while QHP issuers with allowable costs greater than 103 percent of the QHP's target amount will receive payments from HHS to offset a percentage of those losses.

1. Definitions (§ 153.500)

In § 153.500, we proposed a number of definitions for purposes of administering risk corridors. We proposed to define ''allowable administrative costs'' as the total non-medical costs as defined in § 158.160(b), including costs for the administration and operation incurred by the plan as set forth in § 158.160(b)(2). We proposed to define ''allowable costs'' as an amount equal to the total medical costs, which include clinical costs, excluding allowable administrative costs, paid by the QHP issuer in providing benefits covered by the QHP. ''Charge'' was defined as the flow of funds from QHP issuers to HHS. ''Direct and indirect remuneration'' was defined by reference to the definition used for Medicare Part D purposes. ''Payment'' was defined as the flow of funds from HHS to QHP issuers. ''Qualified health plan'' was defined by reference to the definition for the term included in the proposed Exchange Establishment rule. ''Risk corridors'' was defined as any payment adjustment system based on the ratio of allowable costs of a plan to the plan's target amount. ''Target amount'' was defined as an amount equal to the total premiums incurred by a QHP, including any premium tax credit under any governmental program, reduced by the allowable administrative costs of the plan.

Considering the comments received and other considerations discussed below, we are finalizing this section with the following modifications:

We are adding the defined term, ''administrative costs,'' meaning total non-claims costs for a QHP as defined in § 158.160(b). We are revising the defined term, ''allowable administrative costs,'' to mean administrative costs, capped at 20 percent of premiums earned. We are revising the definition of ''allowable costs'' to reference the MLR term ''incurred claims'' and to include quality improvement and health information technology expenditures, as defined in the MLR rule. We are also referencing the after-the-fact adjustments described in § 153.530(b) for reinsurance and risk adjustment amounts paid or received by a QHP issuer.

We are revising the definition of ''direct and indirect remuneration'' to mean prescription drug rebates received by the issuer within the meaning of § 158.140(b)(1)(i). This definition matches the concept from the MLR rule, which takes into account rebates, but not other forms of remuneration, such as price concessions and discounts.

We are adding the defined term, ''premiums earned,'' meaning monies paid by or for enrollees with respect to a QHP as a condition of receiving coverage under that plan, including any fees or other contributions paid by or for enrollees. This defined term references the equivalent definition in the MLR rule, and is intended to clarify that premiums are to be determined in a manner consistent with the MLR rule, a consistency we seek with respect to the risk corridors program when practicable. We are revising the defined term, ''target amount,'' to reference the new defined term ''premiums earned.''

We are moving the definition of ''qualified health plan'' to subpart A. We are not modifying the definitions of ''charge,'' ''payment,'' or ''risk corridors.'' Finally, we are making a number of clarifying modifications throughout this section. Many of the revisions we are making to defined terms in this subpart are intended to parallel terms used in the MLR rule, to the extent feasible. These revised definitions are used in the risk corridors calculation in a manner that is mathematically identical to the statutory formulation in section 1342 of the Affordable Care Act.

Comment: In the preamble of the proposed rule, we discussed the possibility of imposing a 20 percent limitation on allowable administrative costs. A number of commenters supported this limitation. Some commenters supported the 20 percent limitation because it would prevent an issuer with high administrative costs from receiving risk corridors payments, and then using those payments to pay the required MLR rebates. Other commenters stated that imposing a limitation would be consistent with the MLR rule—a consistency that could reduce the need for issuers to maintain data for two different formulas.

Response: We are revising the definition of allowable administrative costs accordingly.

Comment: We received a number of comments that supported including quality improvement expenditures in allowable costs. Some commenters also suggested including health information technology expenses, which the MLR rule also takes into account. The commenters stated that including quality improvement expenses and health information technology expenditures in allowable costs would ensure consistency with MLR requirements, and would incentivize issuers to make these investments, which could inure to the benefit of enrollees. Some commenters requested that we adopt certain modifications to those MLR definitions. For example, two commenters suggested that HHS adopt a standard-based ''functional approach'' for determining whether an activity or function is a quality improvement activity similar to that employed by MLR. Under this approach, the function of the activity would dictate whether it was a quality improvement activity that issuers could include in allowable costs. Another commenter recommended that quality improvement activity expenditures be based on projections.

Response: We viewed the proposed rule as including these costs in allowable costs, because they are not among the administrative costs in § 158.160(b). We are revising the definition of allowable costs to make clear that it includes both expenditures to improve health care quality and expenditures related to health information technology and meaningful use requirements. However, we are not modifying those MLR definitions for purposes of risk corridors, in order to retain consistency with the MLR calculation.

Comment: A few commenters requested that the risk corridors program not utilize the Medicare Part D formulation of direct and indirect remuneration. They stated that the Part D formulation is too broad for the risk corridors program, and that a narrower construct is appropriate here. Commenters contrasted the formulation applicable to Medicare, a governmental program, with the formulation that in their view should be applicable to commercial plans. Commenters recommended including a number of different definitions of rebates, discounts, and price concessions. One commenter recommended using the formulation used in the retiree drug subsidy program under subpart R of the Medicare Modernization Act regulations at 42 CFR 423.880 *et seq.*

Response: We acknowledge the breadth of the proposed definition of direct and indirect remuneration, and are revising the definition to be consistent with the approach adopted by the MLR rule. The MLR rule requires deduction of prescription drug rebates received by an issuer for both reporting and calculation purposes. We intend that MLR rules for defining and determining when prescription drug rebates are received by an issuer apply for risk corridors purposes.

Comment: One commenter recommended that allowable costs be defined as the sum of claims incurred during the risk corridors reporting year and paid through March 31 of the following year plus unpaid claims liabilities associated with claims incurred during the risk corridors reporting year.

Response: We agree that the calculation of allowable costs should include a run-out period and unpaid claims liabilities, and are clarifying that allowable costs should be calculated in accordance with the MLR rule.

Comment: We received four comments about the definition of ''QHP.'' Three commenters stated that a plan offered by an issuer outside of the Exchange that is identical to a QHP should be subject to the risk corridors program. Those commenters cited administrative simplicity, and stated that ''the pricing of QHPs is supposed to be the same whether offered on or off an Exchange.'' A fourth commenter requested guidance on the issue.

Response: The Affordable Care Act provides that the risk corridors program applies to QHPs. For risk corridors purposes, the QHP definition set forth in the Exchange Establishment rule applies. A QHP issuer is not precluded from offering a QHP outside an Exchange. If a QHP issuer does so, the QHP offered outside an Exchange is subject to the risk corridors program. We believe that, in keeping with the discussion of the same premium provision in the preamble of the Exchange Establishment rule, this generally means that health plans that are substantially the same as a QHP will be subject to the risk corridors program. HHS may clarify this standard in future rulemaking or guidance.

Comment: A number of commenters requested that the risk corridors

calculation take into account profits in a manner similar to the MLR rule. Some commenters requested that allowable administrative costs include profits, margin, or underwriting gain. This inclusion would be consistent with the MLR rule, which permits an issuer in certain circumstances to have administrative expenses and profits up to 20 percent of after-tax premium revenues before a rebate is due. Commenters also noted that section 1342(a) of the Affordable Care Act states that risk corridors calculations are to be based on a similar program under Medicare Part D, which includes return on investment, an analog to profits, in the definition of target amount.

Response: The proposed rule did not address profits in the risk corridors calculation. In the HHS notice of benefit and payment parameters, we intend to propose that profits be included within administrative costs for purposes of the risk corridors calculation, consistent with MLR.

Comment: A number of commenters requested that the risk corridors calculation take into account taxes in a manner similar to the MLR rule. The MLR rule requires reporting of a broad range of taxes, and deduction of certain taxes from premiums in the MLR denominator. One commenter noted that taxes may either be subtracted from premiums or added to allowable administrative costs.

Response: The proposed rule did not address taxes in the risk corridors calculation. In the HHS notice of benefit and payment parameters, we intend to propose that taxes and other expenses be included within administrative costs for purposes of the risk corridors calculation, with those Federal and State taxes and licensing and regulatory fees described in § 158.161(a), § 158.162(a)(1), and § 158.162(b)(1) exempt from the 20 percent cap on allowable administrative expenses.

Comments: Several commenters sought clarification as to whether any of the risk corridors elements were projections. Various commenters suggested that premiums or administrative costs should reflect projections. One commenter requested a clarification to confirm the intent to use projected costs as the targeted amount.

Response: Section 1342 of the Affordable Care Act does not allow the use of projections. Furthermore, because the temporary risk corridors program is designed to limit the extent of actual issuer losses (and gains) with respect to QHPs, the program will use actual data, not projected data.

2. Risk Corridors Establishment and Payment Methodology (§ 153.510)

In § 153.510 of the proposed rule, we proposed to establish risk corridors by specifying risk percentages above and below the target amount. In § 153.510(a), we proposed to require a QHP issuer to adhere to the requirements set by HHS for the establishment and administration of a risk corridors program for calendar years 2014 through 2016. The preamble to the proposed rule stated that we would issue guidance in the annual HHS notice of benefit and payment parameters for QHPs regarding reporting and the administration of payments and charges. The preamble also stated that risk corridors guidance will be plan-specific, and not issuer-specific, as is the case with respect to the MLR rule, and that we interpreted the risk corridors provisions to apply to all QHPs offered in the Exchange.

In § 153.510, we also established the payment methodology for the risk corridors program, using the thresholds and risk-sharing levels specified in statute. In § 153.510(b), we described the method for determining payment amounts to QHP issuers. For a QHP with allowable costs in excess of 103 percent but not more than 108 percent of the target amount, HHS will pay the QHP issuer 50 percent of the amount in excess of 103 percent of the target amount. For a QHP with allowable costs that exceed 108 percent of the target amount, the Affordable Care Act directs HHS to pay the QHP issuer an amount equal to 2.5 percent of the target amount plus 80 percent of the amount in excess of 108 percent of the target amount.

In § 153.510(c), we described the circumstances under which QHP issuers will remit charges to HHS, as well as the means by which HHS will determine those charge amounts. We proposed that QHP issuers will begin to remit charges to HHS for the first dollar of allowable charges less than 97 percent of the target amount. For a QHP with allowable costs that are less than 97 percent of the target amount but greater than 92 percent of the target amount, HHS will charge the QHP issuer an amount equal to 50 percent of the difference between 97 percent of the target amount and the actual value of allowable costs. For a QHP with allowable costs below 92 percent of the target amount, the QHP issuer will remit charges to HHS in an amount equal to 2.5 percent of the target amount plus 80 percent of the difference between 92 percent of the target amount and the actual value of allowable costs.

While we did not propose deadlines in the proposed rule, we discussed in the preamble timeframes for QHP issuers to remit charges to HHS. We suggested, for example, that a QHP issuer required to make a risk corridors payment may be required to remit charges within 30 days of receiving notice from HHS, and that HHS would make payments to QHP issuers that are owed risk corridors amounts within a 30-day period after HHS determines that a payment should be made to the QHP issuer. QHP issuers who are owed these amounts will want prompt payment, and payment deadlines should be the same for HHS and QHP issuers. We sought comment on these proposed payment deadlines in the preamble to the proposed rule.

Considering the comments received, we are finalizing this section as proposed, with a few clarifying modifications.

Comments: We received a number of comments suggesting that the risk corridors calculation should be performed at a less granular level than the plan level. The most common suggestion was aggregation at the issuer level, although other alternatives were suggested. One commenter suggested aggregation at the carrier, State and business line level, while another recommended applying the risk corridors calculation separately to an issuer's aggregate non-group QHP business and aggregate small group QHP business. One reason advanced for these alternatives was consistency with the MLR rules, which apply at the issuer level. Commenters also noted that issuers do not currently accumulate data at the plan level. Some commenters stated that issuer-level data would be more credible and reliable.

Response: We have carefully considered the commenters' suggestions, but are not making the requested change. The statutory language governing risk corridors does not afford the necessary flexibility. The statutory provision that governs risk corridors at section 1342(a) of the Affordable Care Act describes the risk corridors program as one in which ''a qualified health plan offered in the individual or small group market shall participate * * *''. By contrast, section 2718 of the PHS Act, which governs the MLR program, requires the calculation of a ratio with respect to an issuer.

Comment: One commenter requested that the risk corridors program may be based on targeted medical costs (net premiums) in addition to the premium rates.

Response: We are not making the changes proposed by the commenter because section 1342 of the Affordable Care Act does not provide the flexibility necessary to do so. That section requires

that the risk corridors program be based upon the ratio of a plan's total costs, other than administrative costs, to its total premiums, reduced by the administrative costs. In codifying that section in regulation, we have sought to define the relevant terms in a manner consistent with those used in the MLR calculation.

Comments: A number of commenters addressed the risk corridors payment deadline. Three commenters agreed that 30 days was a reasonable timeframe for both payments and charges, and one commenter recommended that payments and charges be paid once per year. One commenter suggested requiring issuers of QHPs to submit risk corridors data within 30 days after submission of a request for payment to HHS or receipt of demand for payment from HHS.

Response: We plan to address the risk corridors payment deadline in the HHS notice of benefit and payment parameters.

3. Attribution and Allocation of Revenue and Expense Items (§ 153.520)

In § 153.520(a)(3) of the proposed rule (now § 153.530(d)), we proposed rules for accounting for reinsurance claims submitted on a date to be determined by HHS for a given reinsurance benefit year. Specifically, we proposed that a QHP issuer be required to attribute reinsurance payments to risk corridors based on the date on which the valid reinsurance claim was submitted. For example, if the QHP issuer were to submit a reinsurance claim on or before the deadline for a benefit year, that QHP issuer would attribute the claim payment to the risk corridors calculation for the benefit year in which the costs were accrued. Conversely, if the QHP issuer were to submit a claim after the deadline for a benefit year, that QHP issuer would attribute the claim payment to the risk corridors calculation for the following benefit year.

We are finalizing this provision as proposed, with the following modifications:

We are revising § 153.520(d) to clarify that an issuer must attribute not only reinsurance payments, but also reinsurance contributions and risk adjustment payments and charges to the benefit year for which the contributions, charges, or payments apply, not the year in which the claim was submitted.

In addition, we are including the new paragraphs § 153.520(a), § 153.520(b), § 153.520(c), and § 153.520(e) to clarify the attribution of items, such as quality improvement and health information technology expenditures, that are typically not plan-specific. Paragraph 153.520(a) requires that each item of revenue and expense in allowable costs and target amount for a QHP must be reasonably attributable to that QHP's operations. Paragraph 153.520(b) states that each item must be reasonably allocated across the issuer's plans (that is, QHPs and non-QHPs). Thus, § 153.520(a) and § 153.520(b) require an issuer to allocate shared revenue and expense items between its health plans and its other business lines, and then to attribute its shared items within its health plans to each plan. To the extent that the issuer is utilizing a method for allocating expenses for MLR purposes, the method used for risk corridors purposes under § 153.520 must be consistent. Paragraph 153.520(c) requires an issuer to disclose to HHS a detailed description of the methods and bases for the attribution and allocation. We plan to specify the timing and method of disclosure in future guidance. Finally, § 153.520(e) requires an issuer to maintain the supporting records for the attribution and allocation for 10 years, and to make the records available to HHS upon request.

Comments: We received a few comments to the proposed provision attributing reinsurance payments to the applicable benefit year. One commenter stated that the rule was inconsistent with issuers' pricing practices, the MLR calculation, and financial reporting practices. The commenter stated that issuers could manipulate risk corridors payments by delaying claims submissions, and that claims not submitted in time for the 2016 calculation would not be eligible for risk corridors, since the program would have terminated. Another commenter recommended that reinsurance amounts be on a ''basis other than a paid basis'' in order to be consistent with the MLR calculation. Another commenter recommended attribution of reinsurance claims to the year of submission, even if the claims were incurred in a prior benefit year.

Response: We are clarifying in the rule that reinsurance and risk adjustment payments, contributions, and charges are attributed to the benefit year with respect to which the reinsurance or risk adjustment amounts apply. For example, reinsurance payments received in 2015 for claims costs incurred in 2014 (even if the reinsurance claim was properly submitted in 2015) would be attributed to 2014 for purposes of risk corridors calculations.

4. Risk Corridors Data Requirements (§ 153.530)

To support the risk corridors program calculations, we proposed in § 153.520 of the proposed rule that all QHP issuers submit data needed to determine actual performance relative to their target amounts, to be collected in standard formats specified by HHS. We proposed in § 153.520(a) to require that QHP issuers submit data related to actual premium amounts collected, including premium amounts paid by parties other than the enrollee in a QHP, and specifically, advance premium tax credits paid by the government. We also proposed that risk adjustment and reinsurance be regarded as after-the-fact adjustments to premiums for purposes of determining risk corridors amounts. Therefore, § 153.520(a)(1) of the proposed rule required that the reported premium amounts be increased by the amounts paid to the QHP issuer for risk adjustment and reinsurance, and § 153.520(a)(2) required that reported premium amounts be reduced for any risk adjustment charges the QHP issuer pays on behalf of the plan, reinsurance contributions that the QHP issuer makes on behalf of the plan, and Exchange user fees that the QHP issuer pays on behalf of the plan. We sought comment on this issue in the preamble.

We proposed in § 153.520(b) that QHP issuers be required to submit allowable cost data to calculate the risk corridors in a format to be specified by HHS, and that allowable costs be reduced for any direct and indirect remuneration received. Finally, we proposed that allowable costs be reduced by the amount of any cost-sharing reductions received from HHS.

Considering the comments received, we are finalizing this provision, with the following modifications:

In order to more clearly reflect section 1342(c)(1)(B) of the Affordable Care Act, we are revising this section so that the adjustments for reinsurance and risk adjustment are made to allowable costs. We are also making a number of clarifying modifications throughout this section.

Comments: Commenters generally agreed that reinsurance and risk adjustment payments and charges should be treated as after-the-fact adjustments to risk corridors. One commenter noted the inconsistency between the proposed rule's treatment of reinsurance and risk adjustment payments and charges as adjustments to premium revenue, and section 1342 of the Affordable Care Act, which requires that those adjustments be made to allowable costs. Another commenter

noted that under the MLR rule, these adjustments are made to premium revenue, and urged that the risk corridors program handle these adjustments in the same manner. One commenter requested clarification that the attribution of reinsurance payments ''received'' be determined on an accrual rather than cash basis. Another commenter, who requested that the risk adjustment program be delayed until at least 2016 because of the complexity of implementing the risk adjustment, reinsurance, and risk corridors programs simultaneously, requested that, for consistency, HHS only take into account reinsurance for purposes of the temporary risk corridors program during those initial years.

Response: In order to more clearly reflect the requirements of the Affordable Care Act, we are revising the section so that those payments and charges are adjustments to allowable costs, rather than premium revenue. We agree with the commenter that reinsurance and risk adjustment payments and charges should be reflected in risk corridors on an accrual basis, and are reflecting that requirement in § 153.520(d) of this final rule. Since all three programs will play important and different roles in stabilizing premiums beginning in 2014, we believe that both the risk adjustment and reinsurance programs should be taken into account as after-the-fact adjustments for purposes of the risk corridors calculation, as required by the statute.

Comments: Commenters expressed concern about the interaction of risk corridors, reinsurance, and risk adjustment with the MLR calculation. Commenters discussed the need for the MLR timeline to take into account those other calculations, payments, and charges. One commenter discussed the challenges faced by publicly held issuers who must also comply with Federal securities laws' disclosure requirements. Two commenters included detailed timelines encompassing proposed due dates for reinsurance, risk adjustment, risk corridors and MLR.

Commenters also supported our efforts to use, where practicable, MLR definitions and concepts in the risk corridors rules, but noted difficulties in using data collected for MLR purposes for premium stabilization purposes because MLR data is compiled at the issuer level, while risk corridors data will be required to be collected at the plan level.

Response: We will provide additional details on timeline-related issues in future guidance. We anticipate that the accounting profession will take appropriate measures to guide issuers, as it has in past analogous circumstances, such as with the retiree drug subsidy program under the Medicare Modernization Act, which was first effective in 2006. We will continue efforts to minimize reporting burden by seeking to utilize data already collected for MLR.

Comments: We received a comment on the issue of how to determine the allowable costs for a QHP if the issuer fails to comply with the reporting requirements in § 153.530. The commenter recommended that HHS use quarterly reports to determine a final payment liability using the lowest HHS payment liability minus a certain percentage of withhold (penalty) of either the premium payments or risk corridors payment.

Response: We interpret the comment as suggesting that HHS determine a baseline amount of allowable costs or payment liability reflecting experience of other issuers. The approach is one of several reasonable methods. We will consider it along with other approaches. We are evaluating measures we could take to address non-compliance.

G. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

Section 1343 of the Affordable Care Act provides for a program of risk adjustment for all non-grandfathered plans in the individual and small group markets both inside and outside of the Exchanges. We noted in the introduction to subpart D of this part that the risk adjustment program described in section 1343 is intended to reduce or eliminate premium differences between plans based solely on expectations of favorable or unfavorable risk selection or choices by higher risk enrollees in the individual and small group markets. The foregoing is relevant for this subpart as well, which finalizes the health insurance issuer standards that are necessary to carry out risk adjustment as described in subpart D.

1. Reserved (§ 153.600)

Section 153.600 of the proposed rule defined a number of terms used in this subpart. Those definitions have been moved to subpart A. We are reserving this section for future use.

2. Risk Adjustment Issuer Requirements (§ 153.610)

We proposed in paragraph (a) that all issuers of risk adjustment covered plans be required to submit risk adjustment data according to the timetable and format prescribed by the State, or HHS on behalf of the State. Considering the comments received, we are finalizing this definition, with the following modifications: We are modifying the requirement that issuers submit risk adjustment data to the State, or HHS on behalf of the State, to align with the changes to § 153.340(a) and (b) discussed above. We are adding a requirement that issuers that offer risk adjustment covered plans store required risk adjustment data in accordance with the risk adjustment data collection approach established by HHS or the State. We note that use of a distributed model may require issuers to format risk adjustment data and maintain that data in a manner that complies with specifications promulgated by the State, or HHS on behalf of the State, and to run risk adjustment software.

Comment: We received many comments supporting the requirement that issuers submit risk adjustment data to the State, or HHS on behalf of the State. A number of commenters requested that HHS expand the definition of risk adjustment data to include rate setting data that may not be available from State Departments of Insurance. Other commenters stated that the amount and type of data envisioned in the proposed rule was appropriate.

Response: We are making only minor changes to this provision, to align with changes made to § 153.340(a).

Comment: One commenter suggested that participation in risk adjustment should be voluntary. Two other commenters urged HHS to delay risk adjustment until sufficient data is available. We received several comments suggesting that the timeframe for data submission be left to States.

Response: The Affordable Care Act requires that issuers of risk adjustment covered plans participate in the risk adjustment program. We believe that there will be sufficient data to administer the risk adjustment program, even in the initial years. Therefore, we are finalizing the policy that all issuers offering risk adjustment covered plans must participate in the program by providing the specified information to the State, or HHS on behalf of the State, on a timeframe determined by that State.

In paragraph (b) of the proposed rule, we proposed to permit contractual arrangements between issuers and providers, suppliers, physicians, and other practitioners to ensure that issuers receive the necessary risk adjustment data. Considering the comments received, we are finalizing this paragraph as paragraph (c).

Comments: We received a number of comments in response to this provision. Two commenters supported a requirement permitting issuers to require providers, suppliers, physicians, and other practitioners to submit risk adjustment data to those issuers. We received two comments expressing reservations about the requirement on the grounds that it would place additional burdens on practitioners.

Response: We believe that the risk adjustment program is highly dependent on high quality risk adjustment data. Issuers depend on providers, suppliers, physicians, and other practitioners to submit this data to them. Because issuers will receive or be required to make risk adjustment payments based in part on the amount and quality of this risk adjustment data, we believe it is fair to permit issuers to require suppliers, physicians, and other practitioners to submit that data to them in their contracts. We are therefore finalizing this paragraph.

In paragraph (c) of the proposed rule, we proposed that risk adjustment covered plan issuers who owe a net balance of risk adjustment charges will be assessed those net charges upon completion of the risk adjustment process. Additionally, we requested comment as to whether issuers should have a 30-day timeframe in which to pay net charges to the State that assessed those charges, or to HHS on behalf of the State. Considering the comments received, we are finalizing this paragraph, clarifying that charges include any adjustments made pursuant to data validation described in § 153.350.

Comment: We received a few comments supporting the requirement that issuers remit charges to the State, or HHS on behalf of the State.

Response: In response to comments, we are finalizing the requirement that issuers pay risk adjustment charges to the State, or HHS on behalf of the State. We are clarifying that charges include any adjustments made pursuant to data validation described in § 153.350.

Comment: We received one comment supporting a requirement that issuers be required to pay net charges within 30 days of the assessment of those charges by a State, or HHS on behalf of a State.

Response: In response to the comment, we are adding a provision that issuers must pay net charges to the State, or HHS on behalf of the State, within 30 days of the assessment of those charges.

3. Compliance With Risk Adjustment Standards (§ 153.620)

The credibility of risk adjustment is important to stabilizing health insurance premiums in the Exchanges. Consistent with § 153.350 of the proposed rule, we proposed in § 153.620 that risk adjustment covered plan issuers must make available data to HHS or the State to support validation of the risk adjustment data that they have submitted. In paragraph (b), we proposed that risk adjustment covered plan issuers retain the risk adjustment data that they have reported for a period of ten years. For the reasons described in the proposed rule and considering the comments received, we are finalizing these provisions as proposed with a few modifying clarifications.

Comment: We received several comments supporting the requirement that issuers make data required for validation of risk adjustment data available to States or HHS on behalf of the State. Two commenters suggested that HHS establish sanctions for issuers that do not comply with the data validation and records maintenance requirements. One commenter opposed this requirement, suggesting that the requirement would force issuers to disclose sensitive data.

Response: We believe that the data validation and records maintenance standards are necessary to support the credibility of the risk adjustment program. After consideration of the comments received, we are finalizing the proposed provision with a minor drafting change to § 153.610(b) to clarify that the provision applies when the State, or HHS on behalf of the State, requests the data.

Comment: We received several comments suggesting that a ten-year record retention requirement was too long and would impose a significant burden on issuers.

Response: We believe that the record retention requirements should be consistent with other Federal record retention requirements, and are finalizing the proposed provision.

III. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of the final rule that differ from the proposed rule are as follows:

Subpart A—General Provisions (§ 153.10 and § 153.20)

- We have moved a number of reinsurance-related definitions to subpart A. We have made technical changes to the definition of ''attachment point,'' ''coinsurance rate,'' ''contribution rate,'' and ''reinsurance cap'' to reflect comments received.
- We have moved a number of risk adjustment-related definitions to subpart A. We have added several new definitions—''individual risk score,'' ''calculation of plan average actuarial risk,'' ''calculation of payments and charges,'' ''risk adjustment data collection approach,'' and ''risk adjustment data.'' We also modified the definition of ''risk adjustment methodology'' to mean all parts of risk adjustment—the risk adjustment model, the calculation of plan average actuarial risk, the calculation of payments and charges, the risk adjustment data collection approach, and the schedule for the risk adjustment program. We have modified the definition of ''risk adjustment data'' to mean all data that are used in a risk adjustment model, or the calculation of plan average actuarial risk, or the calculation of payments and charges, or that are used for validation or audit of such data.

Subpart B—State Notice of Benefit and Payment Parameters (§ 153.100 and § 153.110)

- We have clarified that a State that establishes a reinsurance program must publish a notice of benefit and payment parameters if it intends to modify the data requirements for reinsurance payments, collect reinsurance contributions, use more than one applicable reinsurance entity, or modify any reinsurance parameters. We have clarified that States have the flexibility to establish a reinsurance entity regardless of whether or not they establish a State Exchange.
- We have clarified that a State operating a risk adjustment program must publish a notice of benefit and payment parameters setting forth the risk adjustment methodology and data validation that it will use.
- We have specified that State notices of benefit and payment parameters be issued by March 1 of the calendar year prior to the first benefit year for which the notice applies.
- We have clarified that a State that does not publish a notice of benefit and payment parameters forgoes its right to modify the data requirements for reinsurance payments, collect reinsurance contributions, use more than one applicable reinsurance entity, modify any reinsurance parameters, or use any risk adjustment methodology or data validation standards other than those published in the HHS notice of benefit and payment parameters for use by HHS when operating risk adjustment on behalf of the State.

• We have specified that a State that elects to collect additional reinsurance contributions must describe the purpose of the additional collection and the additional contribution rate.

• We have clarified that a State that modifies the reinsurance parameters from those published in the annual HHS notice of benefit and payment parameters must apply those parameters uniformly throughout the State.

Subpart C—State Standards Related to the Reinsurance Program (§ 153.200–§ 153.250)

• We have clarified that States that establish an Exchange are not required to establish a reinsurance program.

• We have revised the process for collection of contributions so that HHS will collect contributions from self-insured plans, while the State has the option to collect from fully insured plans. We have required States to notify HHS by December 1, 2012, if they elect to collect reinsurance contributions from fully insured plans for the 2014 benefit year, and by September 1 of the calendar year that is two years prior to the applicable benefit year if they elect to collect reinsurance contributions from fully insured plans for any benefit year after 2014.

• We have directed each State to notify HHS of the percentage of reinsurance contributions received by HHS allocated to each applicable reinsurance entity, if applicable.

• We have added provisions specifying that if a State elects to collect additional reinsurance contributions, HHS will only collect additional amounts for administrative expenses, and will not collect additional amounts for reinsurance payments.

• We are no longer requiring that reinsurance payments be linked to essential health benefits.

Subpart D—State Standards Related to the Risk Adjustment Program (§ 153.300–§ 153.350)

• We have added a deadline for States to notify issuers of payments and charges.

• We have added a provision that States must submit annual risk adjustment program summary reports to HHS.

• We have clarified the standards for publication of risk adjustment methodology in HHS and State notices of benefit and payment parameters.

• We have modified the proposed approach to risk adjustment data collection, as follows: When HHS operates a risk adjustment program, it will use a distributed approach so that individual data remains with the issuer. When a State operates a risk adjustment program, it may choose the approach that best suits its program.

• We have modified the privacy and security standards applicable when a State is operating risk adjustment.

• We have adjusted the data validation standards to account for the new approach to risk adjustment data collection.

Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program (§ 153.400 and § 153.410)

• We have clarified that contributing entities must make reinsurance contributions to HHS and the applicable reinsurance entity, if the State elects to collect reinsurance contributions.

• We have clarified which contributing entities must make reinsurance contributions.

• We have clarified issuer standards for States that elect to collect additional funds.

• We have specified a collection timeframe for submission of reinsurance contributions to HHS.

• We have clarified that reinsurance contributions data must be submitted to HHS and each applicable reinsurance entity, if the State elects to collect reinsurance contributions.

Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program (§ 153.500–§ 153.530)

• We added the defined terms ''administrative costs'' and ''premiums earned'' to be consistent with the MLR regulations.

• We revised the defined term ''allowable administrative costs'' to include a 20 percent cap on such costs.

• We revised the defined term ''allowable costs'' to include quality improvement and health information technology expenditures under the MLR regulations.

• We revised the defined term ''direct and indirect remuneration'' to conform with the MLR regulations.

• We revised the provision regarding attribution of reinsurance payments based on the date on which the reinsurance claim was submitted. The final rule specifies that reinsurance payments and contributions and risk adjustment payments and charges be allocated to the benefit year for which they apply.

• We added a number of provisions clarifying how revenue and expense items not typically plan-specific are to be allocated and attributed to plans.

• We revised the provisions concerning after-the-fact adjustments to allowable costs to more clearly reflect the relevant statutory requirements.

Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program (§ 153.610 and § 153.620)

• We have modified issuers' data submission standards to reflect the flexibility afforded to States in collecting risk adjustment data.

• We have included a requirement that issuers that offer risk adjustment covered plans store all required risk adjustment data in accordance with the risk adjustment data collection approach established by HHS, or the State.

• We have specified that issuers remit risk adjustment charges within 30 days.

IV. Collection of Information Requirements

This final rule includes requirements that differ from those included in the proposed rule. The following provisions of provisions this final rule involve changes from the information collection requirements set forth in the proposed rule:

• As described in § 153.210(a), we have added a new provision to the final rule under which a State that contracts with more than one applicable reinsurance entity must notify HHS of the percentage of reinsurance contributions received from HHS for the State to be allocated to each applicable reinsurance entity.

• As described in § 153.220(b), we have added a new standard to the final rule under which a State electing to collect reinsurance contributions from issuers in the fully insured market must notify HHS of its intention to do so.

• As described in § 153.310(d), we have added a new standard to the final rule under which a State operating a risk adjustment program must submit annual summary reports of risk adjustment operations to HHS.

• As described in § 153.340(b)(1), we have modified the risk adjustment data collection standards from the proposed rule. A State operating a risk adjustment program must collect or calculate individual risk scores generated by the risk adjustment model in the Federally certified risk adjustment methodology.

• As described in § 153.400(d), we have modified the data standards applicable to contributing entities with respect to contribution amounts so that a contributing entity in the individual and fully insured market is no longer required to submit enrollment and premium data and a contributing entity in the self-insured market is no longer required to submit data on covered lives and total expenses. Instead, a contributing entity is required to submit

data necessary to substantiate the contribution amounts for the contributing entity.

• As described in § 153.520(c), we have added a new standard to the final rule under which a QHP issuer must submit to HHS a report with detailed description of the methods and specific bases used to attribute revenues and expenses in allowable costs and target amount to each QHP and across plans.

• As described in § 153.520(e), we have added a new standard to the final rule under which a QHP issuer must maintain for ten years and make available to HHS upon request the data used to make certain attributions and allocations of items of revenue or expenses, together with all supporting information required to determine that these methods and bases were accurately implemented.

In addition, this final rule describes some information collections for which HHS plans to seek approval at a later date. For these information collections, HHS will issue future **Federal Register** notices to seek comments on those information collections, as required by the Paperwork Reduction Act. Included among such information collections for which HHS plans to seek later approval are the following requirements:

• As described in § 153.310(d), a State operating a risk adjustment program must submit annual summary reports of risk adjustment operations to HHS.

• As described in § 153.400(d), a contributing entity must submit data required to substantiate the contribution amounts for the contributing entity.

• As described in § 153.410(b), issuers of reinsurance-eligible plans, in order to receive reinsurance payments, must make requests for payment in accordance with the standards of the annual HHS notice of benefit and payment parameters for the applicable benefit year or the applicable State notice of benefit and payment parameters.

• As described in § 153.520(c), a QHP issuer must submit to HHS a report with a detailed description of the methods and specific bases used to attribute revenues and expenses in allowable costs and target amount to each QHP and across plans.

• As described in § 153.530, a QHP issuer must submit to HHS data on premiums earned, allowable costs, and allowable administrative costs with respect to each QHP that the QHP issuer offers.

• As described in § 153.610(a)–(b) and § 153.620(b), an issuer that offers risk adjustment covered plans must submit or make accessible, and must store, all risk adjustment data for those risk adjustment covered plans.

• As described in § 153.620, an issuer that offers risk adjustment covered plans must comply with data validation requests by the State or HHS on behalf of the State.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB.

V. Summary of Regulatory Impact Analysis

The following section focuses on the benefits and costs of the requirements included in this final rule, summarizing analysis from the detailed Regulatory Impact Analysis, available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' That Regulatory Impact Analysis evaluates the impacts of this final rule and a second final rule, titled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers.'' The second final rule was made available for public inspection at the Office of the Federal Register on March 12, 2012.

A. Introduction

HHS has examined the impacts of the final rule under Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Few insurance issuers offering comprehensive health insurance policies fall below the size thresholds for ''small'' business established by the SBA. HHS concludes that this rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is approximately $136 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. Because States are not required to establish a reinsurance program or operate a risk adjustment program, the final rule does not impose a mandate to incur costs above the $136 million threshold on State, local, or tribal governments. Because operational details on how health insurance issuers and entities that must participate in the reinsurance program have not been finalized, we are not able to estimate whether the final rule imposes a mandate to incur costs above the $136 million threshold on the private sector.

B. Need for This Regulation

This rule implements standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with the Affordable Care Act. These programs will mitigate the impacts of potential adverse selection and stabilize the individual and small group markets as insurance reforms and the Exchanges are implemented, starting in 2014. The transitional State-based reinsurance program serves to reduce the uncertainty of insurance risk in the individual market by making payments for high-cost enrollees. The temporary federally administered risk corridors program serves to protect against rate-setting uncertainty for QHPs by limiting the extent of issuer losses (and gains). On an ongoing basis, the State-based risk adjustment program is intended to protect health insurance issuers that attract higher-risk populations (such as individuals with chronic conditions).

C. Summary of Costs and Benefits

Two regulations are being published to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. The detailed Regulatory Impact Analysis evaluates the impacts of both proposed rules, while this summary focuses on the benefits and costs of the requirements in this final rule.

Methods of Analysis

This regulatory impact analysis references Congressional Budget Office (CBO) estimates relating to the Affordable Care Act and CMS estimates published in the FY 2013 President's Budget relating to the Affordable Care Act and the proposed form of this rule. The CBO estimates remain the most comprehensive accounting of all the interacting provisions pertaining to the Affordable Care Act, and contain cost estimates of certain provisions that have not been independently estimated by CMS. We expect that the requirements in this final rule will significantly alter neither CBO's estimates nor CMS's estimates. Our review and analysis of the requirements of the final rule indicate that the impacts are within the margin of error of CBO's and CMS's models.

Summary of Costs and Benefits

CBO estimated program payments and receipts for reinsurance and risk adjustment. As those programs do not begin operation until 2014, there are no outlays for reinsurance and risk adjustment in 2012 and 2013. CBO estimates that risk adjustment payments and collections are equal in the aggregate, but that risk adjustment payments lag revenues by one quarter. CBO did not score the impact of the risk corridors program, but assumed collections would equal payments to plans in the aggregate. The payments and receipts in risk adjustment and reinsurance are financial transfers between issuers and the entities running those programs.

TABLE 1—ESTIMATED OUTLAYS AND RECEIPTS FOR REINSURANCE AND RISK ADJUSTMENT PROGRAMS FY2012–FY2016, IN BILLIONS OF DOLLARS

Year	2012	2013	2014	2015	2016
Reinsurance and Risk Adjustment Program Payments [a]			11	18	18
Reinsurance and Risk Adjustment Program Receipts [a]			12	16	18

[a] Risk-adjustment payments lag receipts by one quarter. Note that although the estimates above are based upon CBO analyses, CBO did not account for reinsurance collections payable to the U.S. Treasury. Consequently, the receipts in the President's Fiscal Year 2013 Budget are higher than those estimated by CBO, though not appreciably different.

Source: CBO. 2011. *Letter to Hon. Nancy Pelosi.* March 20, 2010.

Benefits. Payments through reinsurance, risk adjustment, and risk corridors reduce the increased risk of financial loss that health insurance issuers might otherwise expect to incur in 2014. Insurers charge premiums for expected costs plus a risk premium, in order to build up reserve funds in case medical costs are higher than expected. Reinsurance, risk adjustment, and risk corridors payments reduce the risk to the issuer, reducing the risk premium.

Costs. There are administrative costs to States and Exchanges to set up and administer these premium stabilization programs. However, States may use Exchange Planning and Establishment Grant funding awarded pursuant to section 1311 of the Affordable Care Act to develop these programs. There are also reporting costs for issuers to submit data and financial information.

Regulatory Options Considered

Options considered for the reinsurance, risk adjustment, and risk corridor programs parallel the options considered for Exchanges. These programs aim to mitigate the impacts of potential adverse selection and stabilize the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges are implemented, starting in 2014. The Affordable Care Act structures reinsurance and risk adjustment as State-based programs with Federal guidelines on methodology, while it establishes risk corridors as a federally run program.

HHS identified two regulatory options to the approach set forth in this final rule, as required by Executive Order 12866.

Uniform Standards for Reinsurance and Risk Adjustment: Under this option, HHS would have set a single standard for State operation of reinsurance and risk adjustment. This option would have restricted State flexibility.

State Flexibility for Reinsurance and Risk Adjustment: Under this option, States would have had a great deal of flexibility around whether and how to implement reinsurance and risk adjustment programs. This option would have allowed States to develop these programs to fit their State-specific characteristics. The programs would have been subject to few Federal standards.

Summary of Estimate Costs for Each Option

A single standard for State operations of reinsurance and risk adjustment could have resulted in reduced Federal oversight cost. However, this option could also have reduced innovation and limited the diffusion of successful policies. On the other hand, while State flexibility could have allowed for State innovation, it would have increased the administrative burden on the Federal government and multi-State issuers, as policies and procedures could have varied significantly between States. HHS has adopted a middle course that aims to limit administrative costs, especially for the transitional reinsurance program, while also ensuring that the policy aims of the premium stabilization programs are met. These costs and benefits are discussed more fully in the detailed Regulatory Impact Analysis.

D. Accounting Statement

Category	Primary estimate	Year dollar	Unit discount rate (percent)	Period covered
Benefits:				
Annualized Monetized ($millions/year)	Not estimated	2011	7	2012–2016
	Not estimated	2011	3	2012–2016
Costs:				
Annualized Monetized ($millions/year)	Not estimated	2011	7	2012–2016
	Not estimated	2011	3	2012–2016
Transfers:				

Category	Primary estimate	Year dollar	Unit discount rate (percent)	Period covered
Federal Annualized Monetized ($millions/year).	9925	2011	7	2012–2016
	9633	2011	3	2012–2016
Qualitative	Risk Adjustment transfers funds among individual and small group market health plan issuers. Reinsurance collects funds from all issuers and distributes it to individual market issuers.			

Note: For full documentation and discussion of these estimated costs and benefits see the detailed Regulatory Impact Analysis, available at *http://cciio.cms.gov* under ''Regulations and Guidance.''

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this final rule is necessary to implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with the Affordable Care Act. For purpose of the regulatory flexibility analysis, we expect entities offering health insurance plans, including fully insured health plan issuers and self-insured health plan issuers, to be affected by this proposed rule. We believe that health insurers would be classified under the North American Industry Classification System (NAICS) Codes 524114 (Direct Health and Medical Insurance Carriers) According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for this NAICS code. Health issuers could also be classified in NAICS code 621491 (HMO Medical Centers), in which case the SBA size standard for small entities would be annual receipts of $10 million or less.

HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis, we determined that there were few insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' entities established by the SBA.

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), HHS used 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, HHS used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. HHS estimated that there were 28 small entities with less than $7 million in A&H earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

This final rule contains standards for premium stabilization programs required of health plan issuers including the risk adjustment program as well as the transitional reinsurance program and temporary risk corridors programs. Because we believe that few insurance firms offering comprehensive health insurance policies fall below the size thresholds for ''small'' entities established by the SBA, we conclude that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 153

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium Stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, by adding part 153 to read as set forth below:

Subtitle A—Department of Health and Human Services

Subchapter B—Requirements Relating To Health Care Access

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

Subpart A—General Provisions

Sec.

153.10 Basis and scope.
153.20 Definitions.

Subpart B—State Notice of Benefit and Payment Parameters

153.100 State notice of benefit and payment parameters.
153.110 Standards for the State notice of benefit and payment parameters.

Subpart C—State Standards Related to the Reinsurance Program

153.200 [Reserved]
153.210 State establishment of a reinsurance program.
153.220 Collection of reinsurance contribution funds.
153.230 Calculation of reinsurance payments.
153.240 Disbursement of reinsurance payments.
153.250 Coordination with high-risk pools.

Subpart D—State Standards Related to the Risk Adjustment Program

153.300 [Reserved]
153.310 Risk adjustment administration.
153.320 Federally certified risk adjustment methodology.
153.330 State alternate risk adjustment methodology.
153.340 Data collection under risk adjustment.
153.350 Risk adjustment data validation standards.

Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program

153.400 Reinsurance contribution funds.
153.410 Requests for reinsurance payment.

Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program

153.500 Definitions.
153.510 Risk corridors establishment and payment methodology.
153.520 Attribution and allocation of revenue and expense items.
153.530 Risk corridors data requirements.

Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

153.600 [Reserved]
153.610 Risk adjustment issuer requirements.
153.620 Compliance with risk adjustment standards.

Authority: Secs. 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

Subpart A—General Provisions

§ 153.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act (Pub. L. 111–148, 24 Stat. 119):

(1) Section 1321. State flexibility in operation and enforcement of Exchanges and related requirements.

(2) Section 1341. Transitional reinsurance program for individual market in each State.

(3) Section 1342. Establishment of risk corridors for plans in individual and small group markets.

(4) Section 1343. Risk adjustment.

(b) *Scope.* This part establishes standards for the establishment and operation of a transitional reinsurance program, temporary risk corridors program, and a permanent risk adjustment program.

§ 153.20 Definitions.

The following definitions apply to this part, unless the context indicates otherwise:

Alternate risk adjustment methodology means a risk adjustment methodology proposed by a State for use instead of a Federally certified risk adjustment methodology that has not yet been certified by HHS.

Applicable reinsurance entity means a not-for-profit organization that is exempt from taxation under Chapter 1 of the Internal Revenue Code of 1986 that carries out reinsurance functions under this part on behalf of the State. An entity is not an applicable reinsurance entity to the extent it is carrying out reinsurance functions under subpart C of this part on behalf of HHS.

Attachment point means the threshold dollar amount for claims costs incurred by a health insurance issuer for an enrolled individual's covered benefits in a benefit year, after which threshold the claims costs for such benefits are eligible for reinsurance payments.

Benefit year has the meaning given to the term in § 155.20 of this subchapter.

Calculation of payments and charges means the methodology applied to plan average actuarial risk to determine risk adjustment payments and charges for a risk adjustment covered plan.

Calculation of plan average actuarial risk means the specific procedures used to determine plan average actuarial risk from individual risk scores for a risk adjustment covered plan, including adjustments for variable rating and the specification of the risk pool from which average actuarial risk is to be calculated.

Coinsurance rate means the rate at which the applicable reinsurance entity will reimburse the health insurance issuer for claims costs incurred for an enrolled individual's covered benefits in a benefit year after the attachment point and before the reinsurance cap.

Contributing entity means a health insurance issuer or a third party administrator on behalf a self-insured group health plan.

Contribution rate means, with respect to a benefit year, the per capita amount each contributing entity must pay for a reinsurance program established under this part with respect to each reinsurance contribution enrollee who resides in that State.

Exchange has the meaning given to the term in § 155.20 of this subchapter.

Federally certified risk adjustment methodology means a risk adjustment methodology that either has been developed and promulgated by HHS, or has been certified by HHS.

Grandfathered health plan has the meaning given to the term in § 147.140(a) of this subchapter.

Group health plan has the meaning given to the term in § 144.103 of this subchapter.

Health insurance coverage has the meaning given to the term in § 144.103 of this subchapter.

Health insurance issuer or *issuer* has the meaning given to the term in § 144.103 of this subchapter.

Health plan has the meaning given to the term in section 1301(b)(1) of the Affordable Care Act.

Individual market has the meaning given to the term in § 144.103 of this subchapter.

Individual risk score means a relative measure of predicted health care costs for a particular enrollee that is the result of a risk adjustment model.

Large employer has the meaning given to the term in § 155.20 of this subchapter.

Qualified employer has the meaning given to the term in § 155.20 of this subchapter.

Qualified health plan or *QHP* has the meaning given to the term in § 155.20 of this subchapter.

Qualified individual has the meaning given to the term in § 155.20 of this subchapter.

Reinsurance cap means the threshold dollar amount for claims costs incurred by a health insurance issuer for an enrolled individual's covered benefits, after which threshold, the claims costs for such benefits are no longer eligible for reinsurance payments.

Reinsurance contribution enrollee means an individual covered by a plan for which reinsurance contributions must be made pursuant to § 153.400.

Reinsurance-eligible plan means, for the purpose of the reinsurance program, any health insurance coverage offered in the individual market, except for grandfathered plans and health insurance coverage not required to submit reinsurance contributions under § 153.400(a).

Risk adjustment covered plan means, for the purpose of the risk adjustment program, any health insurance coverage offered in the individual or small group market with the exception of grandfathered health plans, group health insurance coverage described in § 146.145(c) of this subchapter, individual health insurance coverage described in § 148.220 of this subchapter, and any other plan determined not to be a risk adjustment covered plan in the annual HHS notice of benefit and payment parameters.

Risk adjustment data means all data that are used in a risk adjustment model, the calculation of plan average actuarial risk, or the calculation of payments and charges, or that are used for validation or audit of such data.

Risk adjustment data collection approach means the specific procedures by which risk adjustment data is to be stored, collected, accessed, transmitted, validated and audited and the applicable timeframes, data formats, and privacy and security standards.

Risk adjustment methodology means the risk adjustment model, the calculation of plan average actuarial risk, the calculation of payments and charges, the risk adjustment data collection approach, and the schedule for the risk adjustment program.

Risk adjustment model means an actuarial tool used to predict health care

costs based on the relative actuarial risk of enrollees in risk adjustment covered plans.

Risk pool means the State-wide population across which risk is distributed.

Small group market has the meaning given to the term in section 1304(a)(3) of the Affordable Care Act.

State has the meaning given to the term in § 155.20 of this subchapter.

Subpart B—State Notice of Benefit and Payment Parameters

§ 153.100 State notice of benefit and payment parameters.

(a) *General requirement for reinsurance.* A State establishing a reinsurance program must issue an annual notice of benefit and payment parameters specific to that State if that State elects to:

(1) Modify the data requirements or data collection frequency for health insurance issuers to receive reinsurance payment from those specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year;

(2) Collect reinsurance contributions pursuant to § 153.220(a)(1);

(3) Collect additional reinsurance contributions pursuant to § 153.220(g);

(4) Use more than one applicable reinsurance entity; or

(5) Modify any reinsurance payment parameters from those specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

(b) *Risk adjustment requirements.* A State operating a risk adjustment program must issue an annual notice of benefit and payment parameters specific to that State setting forth the risk adjustment methodology and data validation standards it will use.

(c) *State notice deadlines.* If a State is required to publish an annual State notice of benefit and payment parameters, it must do so by March 1 of the calendar year prior to the benefit year for which the notice applies.

(d) *State failure to publish notice.* Any State establishing a reinsurance program or operating a risk adjustment program that fails to publish a State notice of benefit and payment parameters within the period specified in paragraph (c) of this section must—

(1) Adhere to the data requirements and data collection frequency for health insurance issuers to receive reinsurance payments that are specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year;

(2) Forgo the collection of reinsurance contributions pursuant to § 153.220(a);

(3) Forgo the collection of additional reinsurance contributions pursuant to § 153.220(g);

(4) Forgo the use of more than one applicable reinsurance entity;

(5) Adhere to the reinsurance parameters specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year; and

(6) Adhere to the risk adjustment methodology and data validation standards published in the annual HHS notice of benefit and payment parameters for use by HHS when operating risk adjustment on behalf of a State.

§ 153.110 Standards for the State notice of benefit and payment parameters.

(a) *Data requirements.* If a State that establishes a reinsurance program elects to modify the data requirements or data collection frequency for health insurance issuers to receive reinsurance payment from those specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year, the State notice of benefit and payment parameters must specify those modifications.

(b) *Reinsurance collection.* If a State that establishes a reinsurance program elects to collect reinsurance contributions pursuant to § 153.220(a), then the State must announce its intention to do so in the State notice of benefit and payment parameters.

(c) *Additional collections.* If a State that establishes a reinsurance program elects to collect additional funds pursuant to § 153.220(g), the State must publish the following:

(1) A description of the purpose of the additional collection, including whether it will be used to cover reinsurance payments, administrative costs, or both; and

(2) The additional contribution rate at which the funds will be collected.

(d) *Multiple reinsurance entities.* If a State plans to use more than one applicable reinsurance entity, the State must publish in the State notice of benefit and payment parameters, for each applicable reinsurance entity—

(1) The geographic boundaries for that entity;

(2) An estimate of the number of enrollees in fully insured plans within those boundaries;

(3) An estimate of the number of enrollees in the individual market within those boundaries;

(4) An estimate of the reinsurance contributions that will be collected by the applicable reinsurance entity;

(5) The percentage of reinsurance contributions received from HHS for the State to be allocated to the applicable reinsurance entity; and

(6) An estimate of the amount of reinsurance payments that will be made to issuers with respect to enrollees within those boundaries.

(e) *Reinsurance payment.* If a State that establishes a reinsurance program intends to modify the attachment point, reinsurance cap, or coinsurance rate from the corresponding parameters specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year, the State must—

(1) Describe those modified parameters in the State notice of benefit and payment parameters; and

(2) Apply the modified parameters uniformly throughout the State.

(f) *Risk adjustment content.* A State operating a risk adjustment program must provide the information set forth in § 153.330(a) and the data validation standards set forth pursuant to § 153.350 in the State notice of benefit and payment parameters.

Subpart C—State Standards Related to the Reinsurance Program

§ 153.200 [Reserved]

§ 153.210 State establishment of a reinsurance program.

(a) *General requirement.* Each State is eligible to establish a reinsurance program for the years 2014 through 2016.

(1) If a State establishes a reinsurance program, the State must enter into a contract with one or more applicable reinsurance entities to carry out the provisions of this subpart.

(2) If a State contracts with more than one applicable reinsurance entity, the State must:

(i) Ensure that each applicable reinsurance entity operates in a distinct geographic area with no overlap of jurisdiction with any other applicable reinsurance entity;

(ii) Use the same payment parameters with respect to each applicable reinsurance entity; and

(iii) Notify HHS in the manner and timeframe specified by HHS of the percentage of reinsurance contributions received from HHS for the State to be allocated to each applicable reinsurance entity.

(3) A State may permit an applicable reinsurance entity to subcontract specific administrative functions required under this subpart and subpart E of this part.

(4) A State must review and approve subcontracting arrangements to ensure efficient and appropriate expenditures

of administrative funds collected under this subpart.

(5) A State must ensure that the applicable reinsurance entity completes all reinsurance-related activities for benefit years 2014 through 2016 and any activities required to be undertaken in subsequent periods.

(b) *Multi-State reinsurance arrangements.* Multiple States may contract with a single entity to serve as an applicable reinsurance entity for each State. In such a case, the reinsurance programs for those States must be operated as separate programs.

(c) *Non-electing States.* HHS will establish a reinsurance program for each State that does not elect to establish its own reinsurance program.

(d) *Oversight.* Each State that establishes a reinsurance program must ensure that the applicable reinsurance entity complies with all provisions of this subpart and subpart E of this part throughout the duration of its contract.

§ 153.220 Collection of reinsurance contribution funds.

(a) *Collections.* If a State establishes a reinsurance program, then—

(1) The State may elect to—

(i) Have the applicable reinsurance entity collect contributions for reinsurance contribution enrollees who reside in that State directly from issuers of health plans; or

(ii) Ensure that the applicable reinsurance entity accepts contributions for reinsurance contribution enrollees who reside in that State with respect to issuers of health plans from HHS.

(2) The State must ensure that the applicable reinsurance entity accepts contributions for reinsurance contribution enrollees who reside in that State with respect to all contributing entities other than issuers of health plans from HHS.

(b) *Notification of election to collect.* If a State establishes a reinsurance program, then that State must notify HHS by December 1, 2012, if the State elects to collect reinsurance contributions from fully insured plans for the 2014 benefit year, and by September 1 of the calendar year that is two years prior to the applicable benefit year if the State elects to collect reinsurance contributions from fully insured plans for any benefit year after 2014, in each case pursuant to paragraph (a)(1)(i) of this section. The State's notification will be effective for the applicable benefit year and each subsequent benefit year during which activities related to the transitional reinsurance program continue.

(c) *Contribution funding.* Reinsurance contributions collected must fund the following:

(1) Reinsurance payments that will total, on a national basis, $10 billion in 2014, $6 billion in 2015, and $4 billion in 2016;

(2) U.S. Treasury contributions that will total, on a national basis, $2 billion in 2014, $2 billion in 2015, and $1 billion in 2016; and

(3) Administrative expenses of the applicable reinsurance entity or HHS when performing reinsurance functions under this subpart.

(d) *Distribution of reinsurance contributions.* If a State establishes a reinsurance program, HHS will distribute funds collected for reinsurance contribution enrollees who reside in a State to the applicable reinsurance entity for that State (or the applicable reinsurance entities, if more than one, in accordance with the allocation specified by the State pursuant to § 153.210(a)(2)(ii)), less:

(1) The State's pro rata share of the U.S. Treasury contribution described in paragraph (c)(2) of this section; and

(2) The State's pro rata share of administrative expenses incurred by HHS when performing reinsurance functions under this subpart.

(e) *National contribution rate.* HHS will set in the annual HHS notice of benefit and payment parameters for the applicable benefit year the national contribution rate and the proportion of contributions collected under the national contribution rate to be allocated to:

(1) Reinsurance payments;

(2) Payments to the U.S. Treasury as described in paragraph (c)(2) of this section; and

(3) Administrative expenses of the applicable reinsurance entity or HHS when performing reinsurance functions under this subpart.

(f) *State collections.* If a State elects to have the applicable reinsurance entity collect contributions pursuant to paragraph (a)(1)(i) of this section, the State must ensure that:

(1) The applicable reinsurance entity for the State collects contributions for reinsurance contribution enrollees who reside in that State directly from issuers of health plans in the amounts required under the national contribution rate.

(2) Reinsurance contributions are allocated as required in the annual HHS notice of benefit and payment parameters for the applicable benefit year, such that:

(i) Contributions allocated for reinsurance payments are only used for reinsurance payments; and

(ii) Contributions allocated for payments to the U.S. Treasury are paid to the U.S. Treasury in a timeframe to be established by HHS.

(g) *Additional State collections.* If a State establishes a reinsurance program, it may elect to collect more than the amounts that would be collected based on the national contribution rate set forth in the annual HHS notice of benefit and payment parameters for the applicable benefit year to provide:

(1) Funding for administrative expenses of the applicable reinsurance entity; or

(2) Additional funding for reinsurance payments.

(h) *Administration of additional State collections.* If a State elects to collect additional amounts pursuant to paragraph (g) of this section for administrative expenses or reinsurance payments, then:

(1) The State must notify HHS within 30 days after publication of the draft annual HHS notice of benefit and payment parameters for the applicable benefit year of the additional contribution rate that it elects to collect for additional administrative expenses. The State must ensure that the State's applicable reinsurance entity—

(i) Collects these additional amounts for additional administrative expenses from issuers of health plans when the State elects to collect contributions from such issuers under paragraph (a)(1) of this section; and

(ii) Accepts additional amounts for additional administrative expenses from HHS from all contributing entities from which HHS collects in accordance with the State's election under paragraph (a)(1) of this section.

(2) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the State must ensure that the applicable reinsurance entity collects all additional reinsurance contributions for the purpose of reinsurance payments from all contributing entities.

§ 153.230 Calculation of reinsurance payments.

(a) *General requirement.* A health insurance issuer of a non-grandfathered individual market plan becomes eligible for reinsurance payments when its claims costs for an individual enrollee's covered benefits in a benefit year exceed the attachment point.

(b) *Reinsurance payment parameters.* If a State establishes a reinsurance program, the State must use, subject to any modifications made pursuant to paragraph (d) of this section, the payment formula and values for the attachment point, reinsurance cap, and coinsurance rate for each year

commencing in 2014 and ending in 2016 established in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

(c) *Reinsurance payments.* If a State establishes a reinsurance program, the State must ensure, subject to § 153.240(b)(1), that the reinsurance payment represents the product of the coinsurance rate multiplied by the health insurance issuer's claims costs for an individual enrollee's covered benefits that the health insurance issuer incurs between the attachment point and the reinsurance cap.

(d) *State modification of reinsurance payment formula.* If a State establishes a reinsurance program, the State may modify the reinsurance payment formula in accordance with the following:

(1) The State may only use one or more of the following methods to modify the reinsurance payment formula:

(i) Increasing or decreasing the attachment point;

(ii) Increasing, decreasing, or eliminating the reinsurance cap; or

(iii) Increasing or decreasing the coinsurance rate.

(2) The State must publish any such modification to the reinsurance payment formula and parameters in a State notice of benefit and payment parameters as described in subpart B of this part.

(3) Any State modification to the reinsurance payment formula pursuant to paragraph (d)(1) of this section must be reasonably calculated to ensure that reinsurance contributions received toward reinsurance are sufficient to cover payments that the applicable reinsurance entity is obligated to make under that State formula for the given benefit year for the reinsurance program.

(4) The State must use a uniform attachment point, coinsurance rate, and reinsurance cap throughout the State.

§ 153.240 Disbursement of reinsurance payments.

(a) *Data collection.* If a State establishes a reinsurance program, the State must ensure that the applicable reinsurance entity collects from health insurance issuers of reinsurance-eligible plans data required to calculate payments described in § 153.230, according to the data requirements and data collection frequency specified by the State in the notice of benefit and payment parameters described in subpart B of this part.

(b) *Reinsurance entity payments.* If a State establishes a reinsurance program, the State must ensure that each applicable reinsurance entity does not make payments to health insurance issuers that exceed contributions received to date by the applicable reinsurance entity.

(1) If a State, or HHS on behalf of the State, determines that reinsurance payments requested for a benefit year will likely exceed the reinsurance contributions that will be received for the year, the State may require that the applicable reinsurance entity reduce (or HHS on behalf of the State may reduce) reinsurance payments, so long as the manner in which payments are reduced is fair and equitable for all health insurance issuers in the individual market.

(2) The State must ensure that an applicable reinsurance entity makes payment to the health insurance issuer of a reinsurance-eligible plan after receiving a valid claim for payment from that health insurance issuer in accordance with the requirements of § 153.410.

(c) *Maintenance of records.* If a State establishes a reinsurance program, the State must maintain books, records, documents, and other evidence of accounting procedures and practices of the reinsurance program for each benefit year for at least 10 years.

§ 153.250 Coordination with high-risk pools.

(a) *General requirement.* The State must eliminate or modify any State high-risk pool to the extent necessary to carry out the reinsurance program established under this subpart.

(b) *Coordination with high-risk pools.* The State may coordinate the State high-risk pool with the reinsurance program to the extent that the State high-risk pool conforms to the provisions of this subpart.

Subpart D—State Standards Related to the Risk Adjustment Program

§ 153.300 [Reserved]

§ 153.310 Risk adjustment administration.

(a) *State eligibility to establish a risk adjustment program.* (1) A State that elects to operate an Exchange is eligible to establish a risk adjustment program.

(2) Any State that does not elect to operate an Exchange, or that HHS has not approved to operate an Exchange, will forgo implementation of all State functions in this subpart, and HHS will carry out all of the provisions of this subpart on behalf of the State.

(3) Any State that elects to operate an Exchange but does not elect to administer risk adjustment will forgo implementation of all State functions in this subpart, and HHS will carry out all of the provisions of this subpart on behalf of the State.

(b) *Entities eligible to carry out risk adjustment activities.* If a State is operating a risk adjustment program, the State may elect to have an entity other than the Exchange perform the State functions of this subpart, provided that the entity meets the standards promulgated by HHS to be an entity eligible to carry out Exchange functions.

(c) *Timeframes.* A State, or HHS on behalf of the State, must implement risk adjustment for the 2014 benefit year and every benefit year thereafter. For each benefit year, a State, or HHS on behalf of the State, must notify issuers of risk adjustment payments due or charges owed annually by June 30 of the year following the benefit year.

(d) *State summary reports.* Each State operating a risk adjustment program must submit to HHS an annual summary of risk adjustment program operations in the manner and timeframe specified by HHS.

§ 153.320 Federally certified risk adjustment methodology.

(a) *General requirement.* Any risk adjustment methodology used by a State, or HHS on behalf of the State, must be a Federally certified risk adjustment methodology. A risk adjustment methodology may become Federally certified by one of the following processes:

(1) The risk adjustment methodology is developed by HHS and published in an annual HHS notice of benefit and payment parameters; or

(2) An alternate risk adjustment methodology is submitted by a State in accordance with § 153.330, reviewed and certified by HHS, and published in an annual HHS notice of benefit and payment parameters.

(b) *Publication of methodology in notices.* The publication of a risk adjustment methodology by HHS in an annual HHS notice of benefit and payment parameters or by a State in an annual State notice of benefit and payment parameters described in subpart B of this part must include:

(1) A complete description of the risk adjustment model, including—

(i) Factors to be employed in the model, including but not limited to demographic factors, diagnostic factors, and utilization factors, if any;

(ii) The qualifying criteria for establishing that an individual is eligible for a specific factor;

(iii) Weights assigned to each factor; and

(iv) The schedule for the calculation of individual risk scores.

(2) A complete description of the calculation of plan average actuarial risk.

(3) A complete description of the calculation of payments and charges.

(4) A complete description of the risk adjustment data collection approach.

(5) The schedule for the risk adjustment program.

(c) *Use of methodology for States that do not operate a risk adjustment program.* HHS will specify in the annual HHS notice of benefit and payment parameters for the applicable year the Federally certified risk adjustment methodology that will apply in States that do not operate a risk adjustment program.

§ 153.330 State alternate risk adjustment methodology.

(a) *State request for alternate methodology certification.* (1) A State request to HHS for the certification of an alternate risk adjustment methodology must include:

(i) The elements specified in § 153.320(b);

(ii) The calibration methodology and frequency of calibration; and

(iii) The statistical performance metrics specified by HHS.

(2) The request must include the extent to which the methodology:

(i) Accurately explains the variation in health care costs of a given population;

(ii) Links risk factors to daily clinical practice and is clinically meaningful to providers;

(iii) Encourages favorable behavior among providers and health plans and discourages unfavorable behavior;

(iv) Uses data that is complete, high in quality, and available in a timely fashion;

(v) Is easy for stakeholders to understand and implement;

(vi) Provides stable risk scores over time and across plans; and

(vii) Minimizes administrative costs.

(b) *State renewal of alternate methodology.* If a State is operating a risk adjustment program, the State may not implement a recalibrated risk adjustment model or otherwise alter its risk adjustment methodology without first obtaining HHS certification.

(1) Recalibration of the risk adjustment model must be performed at least as frequently as described in paragraph (a)(1)(ii) of this section;

(2) A State request to implement a recalibrated risk adjustment model or otherwise alter its risk adjustment methodology must include any changes to the parameters described in paragraph (a)(1) of this section.

§ 153.340 Data collection under risk adjustment.

(a) *Data collection requirements.* If a State is operating a risk adjustment program, the State must collect risk adjustment data.

(b) *Minimum standards.* (1) If a State is operating a risk adjustment program, the State may vary the amount and type of data collected, but the State must collect or calculate individual risk scores generated by the risk adjustment model in the applicable Federally certified risk adjustment methodology;

(2) If a State is operating a risk adjustment program, the State must require that issuers offering risk adjustment covered plans in the State comply with data privacy and security standards set forth in the applicable risk adjustment data collection approach; and

(3) If a State is operating a risk adjustment program, the State must ensure that any collection of personally identifiable information is limited to information reasonably necessary for use in the applicable risk adjustment model, calculation of plan average actuarial risk, or calculation of payments and charges. Except for purposes of data validation, the State may not collect or store any personally identifiable information for use as a unique identifier for an enrollee's data, unless such information is masked or encrypted by the issuer, with the key to that masking or encryption withheld from the State.

(4) If a State is operating a risk adjustment program, the State must implement security standards that provide administrative, physical, and technical safeguards for the individually identifiable information consistent with the security standards described at 45 CFR 164.308, 164.310, and 164.312.

§ 153.350 Risk adjustment data validation standards.

(a) *General requirement.* The State, or HHS on behalf of the State, must ensure proper implementation of any risk adjustment software and ensure proper validation of a statistically valid sample of risk adjustment data from each issuer that offers at least one risk adjustment covered plan in that State.

(b) *Adjustment to plan average actuarial risk.* The State, or HHS on behalf of the State, may adjust the plan average actuarial risk for a risk adjustment covered plan based on errors discovered with respect to implementation of risk adjustment software or as a result of data validation conducted pursuant to paragraph (a) of this section.

(c) *Adjustment to charges and payments.* The State, or HHS on behalf of the State, may adjust charges and payments to all risk adjustment covered plan issuers based on the adjustments calculated in paragraph (b) of this section.

(d) *Appeals.* The State, or HHS on behalf of the State, must provide an administrative process to appeal findings with respect to the implementation of risk adjustment software or data validation.

Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program

§ 153.400 Reinsurance contribution funds.

(a) *General requirement.* Each contributing entity must make reinsurance contributions at the national contribution rate (and any additional contribution rate if the State has elected to collect additional contributions pursuant to § 153.220(g)) for the reinsurance program for all reinsurance contribution enrollees who reside in a State, in a frequency and manner determined by HHS or the State, to HHS or the applicable reinsurance entity, as applicable.

(1) A contributing entity must make reinsurance contributions on behalf of its group health plans and health insurance coverage, except as set forth in paragraph (a)(2) of this section.

(2) A contributing entity is not required to make contributions on behalf of plans or health insurance coverage that consist solely of excepted benefits as defined by section 2791(c) of the PHS Act.

(b) *Multiple reinsurance entities.* If the State establishes or contracts with more than one applicable reinsurance entity, the contributing entity must make reinsurance contributions to each applicable reinsurance entity for the reinsurance contribution enrollees who reside in the applicable geographic area.

(c) *Timeframe for Federal collections.* Each contributing entity must submit contributions to HHS on a quarterly basis beginning January 15, 2014.

(d) *Data requirements.* Each contributing entity must submit to HHS and each applicable reinsurance entity, if the State elects to collect reinsurance contributions, data required to substantiate the contribution amounts for the contributing entity, in the manner and timeframe specified by the State or HHS.

§ 153.410 Requests for reinsurance payment.

(a) *General requirement.* An issuer of a reinsurance-eligible plan may make a

request for payment when an enrollee of that reinsurance-eligible plan has met the criteria for reinsurance payment set forth in the annual HHS notice of benefit and payment parameters for the applicable year or the State notice of benefit and payment parameters described in subpart B of this part, as applicable.

(b) *Manner of request.* An issuer of a reinsurance-eligible plan must make requests for payment in accordance with the requirements of the annual HHS notice of benefit and payment parameters for the applicable benefit year or the State notice of benefit and payment parameters described in subpart B of this part, as applicable.

Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program

§ 153.500 Definitions.

The following definitions apply to this subpart:

Administrative costs mean, with respect to a QHP, total non-claims costs incurred by the QHP issuer for the QHP, as described in § 158.160(b) of this subchapter.

Allowable administrative costs mean, with respect to a QHP, administrative costs of the QHP, up to 20 percent of the premiums earned with respect to the QHP (including any premium tax credit under any governmental program).

Allowable costs mean, with respect to a QHP, an amount equal to the sum of incurred claims of the QHP issuer for the QHP, within the meaning of § 158.140 of this subchapter (including adjustments for any direct and indirect remuneration); expenditures by the QHP issuer for the QHP for activities that improve health care quality as set forth in § 158.150 of this subchapter; expenditures by the QHP issuer for the QHP related to health information technology and meaningful use requirements as set forth in § 158.151 of this subchapter; and the adjustments set forth in § 153.530(b).

Charge means the flow of funds from QHP issuers to HHS.

Direct and indirect remuneration means prescription drug rebates received by a QHP issuer within the meaning of § 158.140(b)(1)(i) of this subchapter.

Payment means the flow of funds from HHS to QHP issuers.

Premiums earned mean, with respect to a QHP, all monies paid by or for enrollees with respect to that plan as a condition of receiving coverage, including any fees or other contributions paid by or for enrollees, within the meaning of § 158.130 of this subchapter.

Risk corridors means any payment adjustment system based on the ratio of allowable costs of a plan to the plan's target amount.

Target amount means, with respect to a QHP, an amount equal to the total premiums earned with respect to a QHP, including any premium tax credit under any governmental program, reduced by the allowable administrative costs of the plan.

§ 153.510 Risk corridors establishment and payment methodology.

(a) *General requirement.* A QHP issuer must adhere to the requirements set by HHS in this subpart and in the annual HHS notice of benefit and payment parameters for the establishment and administration of a program of risk corridors for calendar years 2014, 2015, and 2016.

(b) *HHS payments to health insurance issuers.* QHP issuers will receive payment from HHS in the following amounts, under the following circumstances:

(1) When a QHP's allowable costs for any benefit year are more than 103 percent but not more than 108 percent of the target amount, HHS will pay the QHP issuer an amount equal to 50 percent of the allowable costs in excess of 103 percent of the target amount; and

(2) When a QHP's allowable costs for any benefit year are more than 108 percent of the target amount, HHS will pay to the QHP issuer an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of allowable costs in excess of 108 percent of the target amount.

(c) *Health insurance issuers' remittance of charges.* QHP issuers must remit charges to HHS in the following amounts, under the following circumstances:

(1) If a QHP's allowable costs for any benefit year are less than 97 percent but not less than 92 percent of the target amount, the QHP issuer must remit charges to HHS in an amount equal to 50 percent of the difference between 97 percent of the target amount and the allowable costs; and

(2) When a QHP's allowable costs for any benefit year are less than 92 percent of the target amount, the QHP issuer must remit charges to HHS in an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of the difference between 92 percent of the target amount and the allowable costs.

§ 153.520 Attribution and allocation of revenue and expense items.

(a) *Attribution to QHP.* Each item of revenue or expense in allowable costs or the target amount with respect to a QHP must be reasonably attributable to the operation of the QHP, with the attribution based on a generally accepted accounting method, consistently applied. To the extent that an issuer utilizes a specific method for allocating expenses for purposes of § 158.170 of this subchapter, the method used for purposes of this paragraph must be consistent.

(b) *Allocation across plans.* Each item of revenue or expense in allowable costs or the target amount must be reasonably allocated across a QHP issuer's plans, with the allocation based on a generally accepted accounting method, consistently applied. To the extent that an issuer utilizes a specific method for allocating expenses for purposes of § 158.170 of this subchapter, the method used for purposes of this paragraph must be consistent.

(c) *Disclosure of attribution and allocation methods.* A QHP issuer must submit to HHS a report, in the manner and timeframe specified in the annual HHS notice of benefit and payment parameters, with a detailed description of the methods and specific bases used to perform the attributions and allocations set forth in paragraphs (a) and (b) of this section.

(d) *Attribution of reinsurance and risk adjustment to benefit year.* A QHP issuer must attribute reinsurance payments and contributions and risk adjustment payments and charges to allowable costs for the benefit year with respect to which the reinsurance payments or contributions or risk adjustment calculations apply.

(e) *Maintenance of records.* A QHP issuer must maintain for 10 years and make available to HHS upon request the data used to make the attributions and allocations set forth in paragraphs (a) and (b) of this section, together with all supporting information required to determine that these methods and bases were accurately implemented.

§ 153.530 Risk corridors data requirements.

(a) *Premium data.* A QHP issuer must submit to HHS data on the premiums earned with respect to each QHP that the issuer offers in the manner and timeframe set forth in the annual HHS notice of benefit and payment parameters.

(b) *Allowable costs.* A QHP issuer must submit to HHS data on the allowable costs incurred with respect to each QHP that the QHP issuer offers in the manner and timeframe set forth in the annual HHS notice of benefit and payment parameters. For purposes of this subpart, allowable costs must be—

(1) Increased by—

(i) Any risk adjustment charges paid by the issuer for the QHP under the risk adjustment program established pursuant to subpart D of this part; and

(ii) Any reinsurance contributions made by the issuer for the QHP under the transitional reinsurance program established pursuant to subpart C of this part.

(2) Reduced by—

(i) Any risk adjustment payments received by the issuer for the QHP under the risk adjustment program established pursuant to subpart D of this part;

(ii) Any reinsurance payments received by the issuer for the QHP under the transitional reinsurance program established pursuant to subpart C of this part; and

(iii) Any cost-sharing reduction payments received by the issuer for the QHP.

(c) *Allowable administrative costs.* A QHP issuer must submit to HHS data on the allowable administrative costs incurred with respect to each QHP that the QHP issuer offers in the manner and timeframe set forth in the annual HHS notice of benefit and payment parameters.

Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

§ 153.600 [Reserved]

§ 153.610 Risk adjustment issuer requirements.

(a) *Data requirements.* An issuer that offers risk adjustment covered plans must submit or make accessible all required risk adjustment data for those risk adjustment covered plans in accordance with the risk adjustment data collection approach established by the State, or by HHS on behalf of the State.

(b) *Risk adjustment data storage.* An issuer that offers risk adjustment covered plans must store all required risk adjustment data in accordance with the risk adjustment data collection approach established by the State, or by HHS on behalf of the State.

(c) *Issuer contracts.* An issuer that offers risk adjustment covered plans may include in its contract with a provider, supplier, physician, or other practitioner, provisions that require such contractor's submission of complete and accurate risk adjustment data in the manner and timeframe established by the State, or HHS on behalf of the State. These provisions may include financial penalties for failure to submit complete, timely, or accurate data.

(d) *Assessment of charges.* An issuer that offers risk adjustment covered plans that has a net balance of risk adjustment charges payable, including adjustments made pursuant to § 153.350(c), will be notified by the State, or by HHS on behalf of the State, of those net charges, and must remit those risk adjustment charges to the State, or to HHS on behalf of the State, as applicable.

(e) *Charge submission deadline.* An issuer must remit net charges to the State, or HHS on behalf of the State, within 30 days of notification of net charges payable by the State, or HHS on behalf of the State.

§ 153.620 Compliance with risk adjustment standards.

(a) *Issuer support of data validation.* An issuer that offers risk adjustment covered plans must comply with any data validation requests by the State or HHS on behalf of the State.

(b) *Issuer records maintenance requirements.* An issuer that offers risk adjustment covered plans must retain any information requested to support risk adjustment data validation for a period of at least ten years after the date of the report.

Dated: March 14, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 14, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–6594 Filed 3–16–12; 11:15 am]

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Part V

Department of Homeland Security

Coast Guard

33 CFR Part 151

46 CFR Part 162

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

46 CFR Part 162

[Docket No. USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on ballast water management by establishing a standard for the allowable concentration of living organisms in ships' ballast water discharged in waters of the United States. The Coast Guard is also amending its regulations for engineering equipment by establishing an approval process for ballast water management systems. These new regulations will aid in controlling the introduction and spread of nonindigenous species from ships' ballast water in waters of the United States.

DATES: This final rule is effective June 21, 2012 except for 33 CFR 151.1513 and 151.2036 which contains information collection requirements that OMB has not approved. The Coast Guard will publish a document in the **Federal Register** announcing the effective date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 22, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on June 21, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–10486 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2001–10486 in the ''Keyword'' box, and then clicking ''Search.''

Collection of Information Comments. If you have comments on the collection of information discussed in section VII.D of this final rule, you must send comments to the Office of Information and Regulatory Affairs (OIRA), OMB. To ensure that OIRA receives your comments on time, you should submit your comments through the preferred methods of email to *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the OIRA, OMB, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material. You may inspect the material incorporated by reference at U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC 20593 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1433. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John Morris, Project Manager, U.S. Coast Guard; telephone 202–372–1433, email *John.C.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations
II. Regulatory History
III. Basis and Purpose
IV. Background
V. Discussion of Comments and Changes
A. Summary of Changes From the NPRM
1. Deferral of Phase-Two Standard
2. Practicability Reviews
3. Applicability
4. COTP Zone Exemption
5. Removal of Ballast Water Reporting Form From CFR
6. Adoption of ETV Protocol
7. Alternate Management Systems and Foreign Approvals
8. Delay of Compliance Date for New Vessels
9. Other Changes
B. Discussion of Comments
1. Applicability
2. Ballast Water Discharge Standard
3. Ballast Water Management Systems
4. Type-Approval Protocols
5. Legal
6. Regulatory Analysis and Initial Regulatory Flexibility Analysis
7. Draft Programmatic Environmental Impact Statement
8. Beyond the Scope
VI. Incorporation by Reference
VII. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Abbreviations

APA Administrative Procedure Act
APHIS U.S. Department of Agriculture's Animal and Plant Health Inspection Service
AMS alternate management system
BWDS ballast water discharge standard(s)
BWE ballast water exchange
BWM ballast water management
BWMS ballast water management system(s)
cfu colony forming unit(s)
COTP Captain of the Port
CSLC California State Lands Commission
DPEIS Draft Programmatic Environmental Impact Statement
DSA Danish Shipowners' Association
EEZ U.S. Exclusive Economic Zone
EIS Environmental Impact Statement
EPA U.S. Environmental Protection Agency
ESA Endangered Species Act
ETV Environmental Technology Verification
FIFRA Federal Insecticide, Fungicide, and Rodenticide Act
FPEIS Final Programmatic Environmental Impact Statement
FR final rule
GRT gross register tons
GSI Great Ships Initiative
GT gross tons
IEC International Electrotechnical Commission
IL Independent Laboratory
IMO International Maritime Organization
IRFA Initial Regulatory Flexibility Analysis
ISO International Organization for Standardization
ITC International Convention on Tonnage Measurement of Ships, 1969
MSC Marine Safety Center
NANPCA Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
NARA National Archives and Records Administration
NBIC National Ballast Information Clearinghouse
NEPA National Environmental Policy Act
NFPA National Fire Protection Association
NIS nonindigenous species
NISA National Invasive Species Act of 1996
NPDES National Pollutant Discharge Elimination System
NPRM notice of proposed rulemaking
NRC National Research Council
OPA Oil Pollution Act of 1990, as amended
OMB Office of Management and Budget
PEIS Programmatic Environmental Impact Statement
PVA population viability analysis
PSU practical salinity unit
PWS RCAC Prince William Sound Regional Citizens' Advisory Council

RA Regulatory Analysis
ROS reduced operating status
SAB Science Advisory Board
SBA Small Business Administration
SNPRM supplemental notice of proposed rulemaking
STEP Shipboard Technology Evaluation Program
UV ultraviolet radiation
VGP Vessel General Permit
VHS Viral Hemorrhagic Septicemia

II. Regulatory History

On August 28, 2009, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' in the **Federal Register** (74 FR 44632). In response, we received 662 letters to the docket for the rulemaking, which contained 2,214 individual comments on the NPRM. We summarize these comments in the preamble of this final rule (*see* V.B. Discussion of Comments).

We held six public meetings on the NPRM in the following locations: Seattle, WA; New Orleans, LA; Chicago, IL; Washington, DC; Oakland, CA; and New York, NY. Comments received at those meetings, both written and oral, are also summarized in this preamble (*see* V.B. Discussion of Comments).

III. Basis and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), requires the Secretary of Homeland Security to ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels. 16 U.S.C. 4711(c)(2)(A). The statutes further stipulate that the Secretary may approve the use of certain alternative ballast water management (BWM) methods if she determines that those alternative methods are at least as effective as ballast water exchange (BWE) in preventing and controlling infestations of aquatic nuisance species. 16 U.S.C. 4711(c)(2)(D)(iii). The Secretary is further required to direct vessels to carry out management practices necessary to reduce the probability of unintentional discharges resulting from ship operations other than ballast water discharge. 16 U.S.C. 4711(c)(2)(E).

NISA also requires the Secretary to assess and, if dictated by that assessment, to revise the Department's BWM regulations not less than every 3 years based on the best scientific information available to her at the time of that review, and potentially to the exclusion of some of the BWM methods listed at 16 U.S.C. 4711(c)(2)(D). 16 U.S.C. 4711(e). The Commandant of the Coast Guard carries out these functions and authorities for the Secretary pursuant to a delegation of authority charging the Coast Guard with establishing and enforcing regulations to prevent the introduction and spread of aquatic nuisance species in the waters of the United States through the ballast water of vessels. Department of Homeland Security Delegation No. 0170.1(II.)(57).

Determining whether an alternative method of BWM is as effective as BWE is not an easy task. Results from several studies have shown the effectiveness of BWE varies considerably and is dependent on vessel type (design), exchange method, ballasting system configuration, exchange location, and method of study. These variables make comparing the effectiveness of an alternative BWM method to the effectiveness of BWE extremely difficult. Some studies suggest that the efficacy of BWE in reducing organism concentration is 80 to 99 percent per event (Hines and Ruiz 2000; Rigby and Hallegraeff 1993; Smith et al. 1996; Taylor and Bruce 2000; Zhang and Dickman 1999) although lower efficacies have been reported (e.g., Dickman and Zhang 1999). Other studies demonstrate that the volumetric efficiency of BWE ranges from 50 to 90 percent (Battelle 2003; USCG 2001; Zhang and Dickman 1999).[1] Thus, vessels with very large starting concentrations of organisms in their ballast tanks might still have large concentrations of organisms after BWE. In addition, a significant number of vessels are constrained by design or route from conducting BWE in compliance with existing regulations prior to their arrival into waters of the United States.

For these reasons, BWE is not well-suited as the basis for the protective BWM programmatic regimen envisioned by NISA, even though it has been a useful interim management practice and was a logical place to start. We have concluded that, as an alternative method to using BWE as the benchmark, establishing a standard for the concentration of living organisms that can be discharged in ballast water will advance the protective intent of NISA and simplify the process for Coast Guard approval of ballast water management systems (BWMS). We have found no other reasonable benchmarking approach.

We have further concluded, through analysis of BWMS on vessels enrolled or being reviewed for the Coast Guard Shipboard Technology Evaluation Program (STEP) and other information before the Coast Guard which is in the docket for this rulemaking, in accordance with the factors set forth in 151.1511(c) and 151.2030(c) of this final rule, that the specific ballast water discharge standard (BWDS) set forth in this rule is practicable.

Setting a BWDS promotes the development of innovative BWM technologies, facilitates enforcement of the BWM regulations, and assists in evaluating the effectiveness of the BWM program. Therefore, in this rule, we amend 33 CFR part 151 by establishing a BWDS. We also amend 46 CFR part 162 by adding an approval process for BWMS intended for use onboard vessels to meet the BWDS.

As part of that approval process, the Coast Guard will require the use of Independent Laboratories (ILs) to perform the testing to be used to support applications for approval. The Coast Guard has a long history of recognizing the qualifications of ILs working under our oversight. In 1979, the Coast Guard promulgated 46 CFR part 159, establishing procedures and standards for accepting ILs for witnessing or performing certain tests and conducting inspections for certain equipment and materials requiring Coast Guard approval. 44 FR 73038 (December 17, 1979). The Coast Guard promulgated 46 CFR part 159 under the authority in 46 U.S.C. 391a (1976) (Vessels carrying certain cargoes in bulk).[2] In 1983, Congress revised and recodified the maritime laws of the United States and moved the relevant authority for 46 CFR

[1] Copies of these studies are available in Docket No. USCG–2001–10486, and were available during the comment period following publication of the NPRM for this rulemaking. Please see **ADDRESSES** section of this rulemaking for accessibility information.

[2] 46 U.S.C. 391a stated ''(3) Rules and regulations[.] In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast Guard is operating * * * shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, * * * equipment * * * .'' The Coast Guard determined that the use of ILs for witnessing or performing certain tests was ''necessary'' to carry out its responsibilities under this statutory section. In the NPRM proposing 46 CFR part 159, the Coast Guard explained that ''the Coast Guard's marine inspection responsibilities increased while the number of personnel available to perform these inspections has not increased at a comparable rate.'' (43 FR 49440, Oct. 23, 1978). The Coast Guard promulgated part 159 to ''free some of the Coast Guard's limited field personnel for other duties with no change in the quality of the approved equipment or material.'' *Id.; see* also 44 FR 73038 (December 17, 1979) (Final rule document promulgating part 159).

part 159 to new 46 U.S.C. 3306.[3] Public Law 98–89 Partial Revision of Title 45, U.S.C. ''Shipping''; House Report No. 98–338 (August 1, 1983), 1983 U.S.C.C.A.N. 924, 952–53.

The authority for current 46 CFR part 159 is 46 U.S.C. 3306, which ''contains broad authority to prescribe regulations for proper inspection and certification of vessels,'' (House Report No. 98–338 (August 1, 1983), 1983 U.S.C.C.A.N. 924, 954–53), including the specific requirement to prescribe regulations to carry out the statutory requirements ''in the most effective manner,'' (46 U.S.C. 3306(a)). The Coast Guard still finds the use of ILs in the Coast Guard's approval process to be ''the most effective manner'' of executing and carrying out its obligations under section 3306.

IV. Background

A full discussion of the legislative and regulatory history of the Coast Guard's actions to implement both NANPCA and NISA may be found in the NPRM for this rule, published on August 28, 2009. 74 FR 44632, 44633.

Vessels subject to today's final rule are also subject to the U.S. Environmental Protection Agency (EPA) Vessel General Permit (VGP) issued under section 402 of the Clean Water Act. The Coast Guard and EPA continue to work closely together in the development of ballast water discharge standards and to harmonize requirements, to the extent feasible and appropriate, under their respective statutory mandates. Under the CWA, EPA proposed the new draft VGP for public comment on November 30, 2011, with a proposed effective date of December 2013.

The draft EPA VGP contains discharge limits for a number of discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation, including numeric limits for ballast water discharges. The Coast Guard notes that the draft VGP proposes to apply numeric treatment limits for ballast water discharges to a broader class of vessels than this final rule. Like the 2008 VGP, the draft 2013 VGP proposes some requirements that are broader in applicability, require additional management requirements, and require differing monitoring or other quality control requirements from today's rulemaking. The 2008 VGP applied requirements to tankers in the coastwise trade and required ballast water exchange for vessels engaged in Pacific nearshore voyages, among other ballast water requirements that differed from the Coast Guard regulation in effect in 2008. The Coast Guard notes that EPA must consider the information in its record, as well as the requirements of the Clean Water Act, as it finalizes the VGP. Therefore, it is possible that the final VGP will contain requirements that differ from those found in our rulemaking today.

For more information on EPA's current VGP or its next draft VGP, visit the EPA's Web site at: *http://www.epa.gov/npdes/vessels.* Nothing in this final rule is intended to limit, in any way, actions the EPA may take in the future with respect to regulation of ballast water discharge in the EPA VGP under its Clean Water Act authorities. *See, e.g.,* 16 U.S.C. 4711(b)(2)(C) and 4711(c)(2)(J).

V. Discussion of Comments and Changes

A. Summary of Changes From the NPRM

This final rule contains a number of changes from the rule proposed by the NPRM (74 FR 44632 (August 28, 2009)). While we list in this section all changes made to the rule since the NPRM, we are highlighting several of these changes not only because they are important, but also because a vast majority of the comments received in the docket addressed at least one of these topics. Most of the changes discussed below were made directly in response to those comments. A full discussion of comments and Coast Guard responses is found in section V.B. Discussion of Comments.

1. Deferral of Phase-Two Standard

Most notably, this final rule does not include the NPRM's proposed phase-two standard. This reflects a decision to move forward with the phase-one standard while the Coast Guard continues to assess the practicability of implementing a phase-two standard, gathers additional data on technology available to meet the phase-two standard for various vessel types, and develops a subsequent rule with an economic and environmental analysis to support a phase-two standard. The decision to remove this more stringent standard from this final rule should not be interpreted as a sign that the Coast Guard is not committed to its statutory responsibility to continually review the BWDS to increase the protectiveness of the BWDS.

Significantly, after this final rule was drafted, the EPA requested its Science Advisory Board (SAB) to review and provide advice regarding whether existing shipboard treatment technologies can reach specified concentrations of organisms in vessel ballast water, how these technologies might be improved in the future, and how to overcome limitations in existing data (EPA SAB 2011). Information was identified on 51 existing or developmental ballast water treatment technologies, although detailed data were available for only 15 specific BWMS. The SAB used this information as the source material for its assessment of ballast water treatment performance and, as requested by the EPA, used proposed ballast water discharge standards as the performance benchmarks. Based on its evaluation of the available data, the SAB concluded that the performance standards for discharge quality proposed by IMO and the Coast Guard are currently measurable, based on data from land-based and shipboard testing. However, current methods (and associated detection limits) prevent testing of BWMS to any standard more stringent than D–2/Phase 1 and make it impracticable for verifying a standard 100 or 1,000 times more stringent. New or improved methods will be required to increase detection limits sufficiently to statistically evaluate a standard 10 times more stringent than IMO D–2/Phase 1; such methods may be available in the near future. The SAB concluded that establishment of a ballast water discharge limit at the proposed Coast Guard Phase I/IMO discharge standard will result in a substantial reduction in the concentration of living organisms in the vast majority of ballast water discharges, compared to discharges of ballast water managed by mid-ocean exchange or discharges of unexchanged ballast water. The numeric limitations in today's final rule represent the most stringent standards that BWMS currently safely, effectively, credibly, and reliably meet (US EPA SAB, 2011.)

The cost, benefit, and environmental impact analyses included in the NPRM could not specifically assess all impacts related to the phase-two standard (although the analyses did include an evaluation of standards that are more stringent than the standard proposed herein as practicable). Many commenters addressed this issue, noting that the lack of analyses made it

[3] Section 3306 directs ''the Secretary shall prescribe necessary regulations to ensure proper execution of, and to carry out, this part [addressing inspection and regulation of vessels] in the most effective manner for (1) The design, construction, alteration, repair, and operation of those vessels [subject to inspection] * * *; (2) lifesaving equipment and its use; (3) firefighting equipment, its use, and precautionary measures to guard against fire; (4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and (5) the use of vessel stores and other supplies of a dangerous nature * * *.''

impossible for them to comment on the phase-two standard in any meaningful manner.

To provide the public with as much information as possible on which to base comments, the Coast Guard will develop additional analyses regarding the potential costs, benefits, and environmental impacts of the proposed phase-two standard or any standard higher than phase-one. When these analyses are completed, the Coast Guard will make them available for public comment, either via a notice of availability or in conjunction with a subsequent rulemaking published in the **Federal Register**.

The Coast Guard still fully intends to issue a later rule that will establish a more stringent phase-two discharge standard once the additional research and analysis necessary to support this more stringent standard has been completed. To demonstrate our commitment, in the final rule text we are reserving the regulatory provisions where the phase-two standard will be found, to show that the Coast Guard does not view publication of this rule as completing the agency's work in controlling the introduction and spread of NIS from ships' ballast water.

2. Practicability Reviews

The NPRM proposed an initial practicability review to be published at least 3 years prior to the first compliance date under the BWDS implementation schedule, with a subsequent review no later than 2 years after the initial review. Because we have removed the phase-two standard from this final rule, we have also removed the recurring practicability reviews that were included in the NPRM. This final rule establishes clearer guidelines and criteria considered for the practicability review. Additionally, because the final rule defers establishing a phase-two standard, we wanted to prevent the scenario in which a finalized phase-two standard believed to be practicable when established should not be implemented according to the established timelines, either because it can be implemented sooner or because it cannot be implemented by the deadline established. To accomplish this, NISA requires regular reviews and strengthening of standards when determined practicable, so completing a review will be part of any future rulemaking. See 16 U.S.C. 4711(e).

This final rule does include one practicability review provision, which requires the Coast Guard to complete and publish the results of its practicability review no later than January 1, 2016. This review will draw a significant component of its information from the BWMS approval application packages that the Coast Guard expects to evaluate between the publication date of this final rule and the initial implementation date. The Coast Guard's practicability review will look at a variety of factors, including but not limited to economic factors and the efficacy and environmental safety of available BWMS technology. While we have listed a number of these factors in this final rule, we have also included a provision allowing us to consider additional factors. This is to ensure that the Coast Guard is not foreclosed from considering any unforeseen issues.

Some commenters argued against considering any factor other than best available technology. Whether the commenters meant ''best available technology'' as a term of art under the Clean Water Act or merely the best technology available in the marketplace, the Coast Guard acknowledges the importance of technology. However, the Coast Guard's authority does not limit the matters of concern to technology. Congress established a practicability standard in NISA; that standard requires that the Coast Guard consider more than just technology. A standard based solely on technology would be inconsistent with the statute.

3. Applicability

In the NPRM, we proposed requiring vessels discharging ballast water into waters of the United States to comply with the BWDS. This included vessels operating solely in coastwise trade and on the internal waters of the United States. Those vessels are not required to conduct a BWE under the existing Coast Guard regulations, and, as such, the proposal was seen as an expansion of those regulations. A large number of commenters questioned this expansion.

Commenters raised a number of issues regarding the applicability of the NPRM. These issues included uncertainty as to whether any of the currently available BWMS could be successfully installed on non-seagoing vessels, the cost of installation of BWMS on these industries, and the benefit of requiring these vessels to install a BWMS.

As a result of these comments, this final rule applies to two groups of vessels discharging ballast water into waters of the United States. The first group is comprised of those vessels currently required to conduct BWE. The second group, which previously was not required to conduct BWE, is comprised of seagoing vessels that do not operate beyond the U.S. Exclusive Economic Zone (EEZ), that take on and discharge ballast water in more than one Captain of the Port (COTP) Zone, and are greater than 1,600 gross register tons (GRT) (3,000 gross tons (GT) International Tonnage Convention (ITC)).

The Coast Guard fully intends to expand the applicability of the BWDS to all vessels not legislatively exempted that operate in U.S. navigable waters or territorial sea, as we proposed in the NPRM, but we have determined that additional analysis is necessary to support this expansion. We also intend to conduct additional research as necessary. We expect that this expansion will be part of the notice or other rulemaking document that addresses the phase-two standard, and that vessels covered by the expanded applicability will be required to install a BWMS that meets at least the phase-one standard.

In addition to the comments on applicability mentioned above, we also received comments questioning why we proposed using the presence of ballast tanks as the main applicability factor for BWMS installation, instead of the actual discharge of ballast water. We agree an important factor in deciding whether a vessel is required to have a BWMS onboard should be the threat that vessel presents to contributing to the threat of aquatic NIS. Vessels that pose a low level of risk, either because they do not discharge ballast water at all, discharge only to shoreside facilities, or discharge only water that presents little threat (public drinking water), should not be required to install a BWMS. For this reason, we revised 33 CFR 151.1510 and 151.2025 to (1) clarify that discharge of ballast water into waters of the U.S. is a threshold requirement for installation of a BWMS, and (2) include an additional BWM option for use of water from a U.S. public water supply meeting certain EPA drinking water standards. We have also slightly revised the applicability section in 33 CFR part 151 subpart C (Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River). We inserted a provision to clearly state that all vessels subject to subpart C are also subject to 33 CFR part 151 subpart D (Ballast Water Management for Control of Nonindigenous Species in Waters of the United States). This does not reflect an actual change to the regulations, as the general applicability provision in subpart D already applies to vessels subject to subpart C. Subpart D requires that these vessels comply with additional NIS reduction practices and the reporting and recordkeeping requirements. We are adding the clarifying statement to subpart C in order to ensure there is no confusion about the applicability of subparts C and

D. We made other slight modifications to align the applicability section of subpart C with that of subpart D, but these revisions do not change the substantive requirements of either subpart.

4. COTP Zone Exemption

Existing BWM regulations include a provision that exempts owners and operators of vessels operating in only one COTP Zone from reporting and recordkeeping requirements. 33 CFR 151.2010(b)(1). In the NPRM, we intended to remove this exemption from the reporting and recordkeeping requirements, but include an exemption from the BWDS for owners and operators of these vessels (those operating in only one COTP Zone). We explained this exemption by stating that ''it is unlikely that vessels operating in only one COTP Zone would introduce invasive species (from outside of that COTP Zone) into the waters of the COTP Zone.'' 74 FR 44634.

Unfortunately, the proposed regulatory text included erroneous cross references, did not actually exempt these vessels from the intended provisions, and did not remove the current reporting and recordkeeping exemption. This error confused many commenters. Other commenters based their comments on our intentions as stated in the preamble, and noted that COTP Zones are purely administrative in nature, not established based on any ecological or biological bases, and therefore are not appropriate boundaries to be used when addressing invasive species.

Because we have revised the applicability of this final rule, as discussed above, the BWDS will not apply to vessels operating within only one COTP Zone. However, we do intend to expand the applicability of the BWM requirement to include all vessels operating in waters of the United States that are not legislatively exempted, but have determined that additional analysis is necessary to support such an expansion. We also intend to conduct additional research as necessary. The issue of whether there are distinct zones or areas where it might be appropriate to include an exemption for vessels that do not leave that zone or area is still open to consideration as part of a subsequent notice or other rulemaking document.

Many commenters supported the concept of geographic exemptions; however, some objected to using COTP Zones as the basis for the exemption. For this reason, the Coast Guard will investigate other possible ways to create an exemption like this, using suggestions from commenters and our Federal agency partners.

We are also keeping intact the current exemption from recordkeeping and reporting requirements for these vessels which operate exclusively in one COTP Zone. We will, in the future, begin a separate rulemaking project addressing BWM recordkeeping and reporting requirements, and any changes to this exemption will be addressed in that project.

5. Removal of Ballast Water Reporting Form From CFR

We have removed the Ballast Water Reporting Form (Office of Management and Budget (OMB) Control No. 1625–0069) from the appendix to 33 CFR part 151 subpart D. This form is still the proper form to satisfy the reporting requirements in 33 CFR 151.2070. We have revised § 151.2070 to reference the National Ballast Information Clearinghouse (NBIC) Web site as the form's location. This change will not have any effect on the public, as the form will still be available and the requirement for filing the form is not being revised.

We have removed this form from the CFR in order to streamline future changes to the form. Any changes would need to comply with provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), which include providing notice to the public and opportunity for comment. Additionally, the form is part of an OMB-approved collection of information that must be renewed on a regular basis. These renewals also include an opportunity for public notice and comment on the form and the associated collection of information.

6. Adoption of Environmental Technology Verification (ETV) Protocol

In the NPRM, we noted that our proposed BWMS approval process was based, in part, on the draft Generic Protocol for the Verification of Ballast Water Treatment Technologies developed under EPA's ETV Program. 74 FR 44640 (Aug. 28, 2009). Since the publication of the NPRM, EPA has completed its development of this protocol, a process that included laboratory testing, stakeholder reviews, and public comment. The protocol may be found on the EPA Web site, under Research and Development, Risk Management Research Publications.[4] The Coast Guard and EPA have been formal partners in the process of developing this protocol. It has always been our intention to incorporate the final ETV Protocol into our BWMS approval process, which we are doing via this final rule.

While this incorporation was not part of the proposal included in the NPRM, we noted that the procedures in the NPRM were based on a preliminary version of the ETV Protocol (74 FR 44634, 44640). While the final ETV Protocol differs from earlier versions, the differences are due both to consensus revisions during finalization of the protocol, and to subsequent peer review and public comments. Some of the comments we received on the NPRM specifically suggested that we use the final ETV Protocol.

For all of these reasons, the Coast Guard has determined that incorporating the final ETV Protocol into this final rule is a logical outgrowth of what was proposed in the NPRM, and that further notice and comment on incorporating it by reference is not required.[5] We have revised the approval process regulations to incorporate the final ETV Protocol, and have removed those portions of the regulation that were made redundant by this incorporation.

7. Alternate Management System(s) (AMS) and Foreign Approvals

The NPRM included a provision to allow foreign type-approved BWMS to receive U.S. type approval subject to an equivalency determination. We have removed that provision in this final rule; however, we still allow manufacturers to use testing done to obtain type approval from a foreign administration, and the data from that testing, to satisfy the U.S. type-approval testing and application requirements if the Coast Guard determines the testing to be equivalent to what is required by our regulation. The language in 46 CFR 162.060–12 was revised; we have included more detail as to what a manufacturer with a foreign-approved BWMS must show in order to use their prior testing to satisfy our approval requirements, rather than vaguely calling for the manufacturer to show equivalency. Despite these revisions, the intent and effect of the changes are substantially similar to what appeared in the NPRM. As such, we view these changes as logical outgrowths of the

[4] EPA/600/R–10/146, version 5.1 (September 2010). Available at *http://www.epa.gov/nrmrl/pubs/600r10146/600r10146.pdf.*

[5] *See Int'l Union, United Mine Workers of Amer.* v. *Mine Safety and Health Admin.,* 626 F.3d 84, 95 (D.C. Cir. 2010) (''a final rule will be deemed to be the logical outgrowth of a proposed rule if a new round of notice and comment would not provide commenters with their first occasion to offer new and different criticisms which the agency might find convincing.'') (internal citations omitted).

NPRM, and thus further notice and comment is not required.

Despite the provision discussed in the previous paragraph, we are aware that many foreign-approved BWMS will require additional testing in addition to analysis under applicable U.S. environmental laws, such as the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). This is due to differences between the international approval regime and the approval protocol adopted in the final rule. This will extend the amount of time required for foreign-approved systems to gain U.S. approval, although the process to secure U.S. approval should still be shorter than if the manufacturer were required to repeat all testing already completed for obtaining type approval from a foreign administration.

Implementing the U.S. approval process will likely take at least 3 years. We do not anticipate having U.S. approved systems that have satisfied the testing protocols required in 46 CFR subpart 162.060 prior to 2015.

To ensure there are BWMS available for vessel installation and use without having to delay the implementation schedule, and also to provide an incentive for the early installation and use of BWMS instead of relying exclusively on BWE, we have added a provision to 33 CFR 151.1510(a)(1), 151.2025(a)(3), and included a new provision (§ 151.2026) and definition (§ 151.1504) to allow for the temporary acceptance of foreign-approved BWMS, providing the Coast Guard determines that the BWMS is at least as effective as BWE. These alternate management systems (AMS) must be approved by foreign governments under the standards set forth in the International Convention for the Control and Management of Ships Ballast Water and Sediments (IMO BWM Convention), after it enters into force, or consistent with relevant guidelines developed by the IMO. This provision for AMS will also allow vessels with BWMS installed to meet requirements of other administrations and/or the standards set forth in the IMO BWM Convention to use such BWMS while operating in waters of the United States. We further note that pursuant to § 151.2025(e) of this final rule, any vessel using an AMS must comply with the terms and conditions of the VGP when operating in U.S. waters, including any applicable discharge limitations.

As with the process for U.S. approval of foreign-approved BWMS, these temporary acceptance determinations will be subjected to reviews under NEPA, ESA, and other environmental policy laws. However, we expect the AMS process will require less time than the more extensive type approval process, which will allow vessel owners to install BWMS prior to the implementation dates contained in the regulation. These earlier installations should result, at the earliest possible date, in a reduction of the risk of ballast water introducing or spreading NIS, as those vessels currently unable to conduct BWE due to safety concerns or voyage constraints will instead be subjecting their ballast water to some type of treatment before discharging it into the waters of the United States.

Use of an AMS will be allowed for up to 5 years after the vessel is required to comply with the BWDS. The 5-year period should provide the manufacturer or vendor with sufficient time to obtain U.S. approval, either using the data from the tests already completed, or by undergoing new tests designed specifically to comply with 46 CFR part 162.060.

8. Delay of Compliance Date for New Vessels

Even with the provision for acceptance of foreign type approvals, a process that is expected to be quicker than completing the full schedule of land-based and shipboard tests, we anticipate there will not be an adequate number of approved BWMS to allow vessel owners to meet the NPRM's proposed compliance date for new vessels. For this reason, we have pushed back the compliance date for new vessels to install Coast Guard-approved BWMS from January 1, 2012, to December 1, 2013. Additionally, the December 1st date will align the compliance date with the proposed effective date for the 2013 EPA VGP. We estimate this deferral could delay the compliance date for up to 600 newly constructed vessels.

We have also added a provision to both 33 CFR part 151 subparts C and D that will allow individual vessel owners to request that the Coast Guard extend their compliance date if, despite the owner's efforts, he or she cannot meet the published compliance dates. This change is in response to commenters who argued that the compliance timelines included in the NPRM were too aggressive.

9. Other Changes

The Coast Guard made additional changes in response to comments, and some of those changes warrant a summary here. The remaining changes are listed at the end of this section and discussed further in section V.B. Discussion of Comments.

First, we are adding a requirement to 33 CFR 151.2075 for sampling ports on each of the vessel's overboard ballast water discharge pipes. This change is a response to commenters who requested stronger enforcement and commenters who asked how enforcement would be achieved. Without the inclusion of sampling ports, Coast Guard inspectors would not be able to sample a vessel's ballast water without potentially delaying the vessel for significant periods of time. Sampling is necessary in order to determine if the BWMS is operating properly to produce ballast water that meets the BWDS. The inclusion of sampling ports is logical outgrowth of the NPRM because the Coast Guard must have means to ensure compliance, and the NPRM included a provision requiring vessel owners and operators to provide access to the Coast Guard for sampling. Also, commenters asked how enforcement would be achieved. Inclusion of this requirement improves Coast Guard enforcement and responds to both groups of these commenters.

Secondly, we received questions from commenters asking who should operate the BWMS during the shipboard testing. We have clarified in 46 CFR 162.060–28 that it should be the vessel crew operating the BWMS. This is most appropriate because the crewmembers are the ones who will need to operate the BWMS after it receives U.S. type approval. Additionally, having the crew operate the BWMS ensures that vendors and manufacturers, who have a stake in the success of the BWMS, are not able to influence the test results. This provision is a logical outgrowth of the NPRM because the NPRM listed the vessel crew as one of two groups that should operate the BWMS during testing. This change is a clarification to show which of those listed entities should operate the BWMS during land-based testing, and which should operate the BWMS during shipboard testing.

Finally, in response to comments, we reduced the time period required for shipboard testing from 12 months to 6 months, removed the requirement for testing to be in three distinct geographic regions, and reduced the number of required, valid test cycles. Several commenters requested these changes, noting that our proposed requirements were unnecessary and too burdensome. We agree that the suggested changes will still provide for adequate shipboard testing of BWMS, therefore, we have made these changes to reduce the burden associated with shipboard testing.

The remaining changes made in response to comments were replacing

the term ''build date'' with ''constructed'', in order to better align with the IMO BWM Convention and updating the civil penalty amounts to reflect their adjustment in a recent Coast Guard final rule.

The Coast Guard made several changes during the drafting of this final rule to eliminate redundancy and streamline the regulatory text. We revised the definitions section in 33 CFR part 151 subpart D by removing those definitions that are already defined in part 151 subpart C, as well as definitions for terms not used in part 151 subpart D. We added definitions for several terms that were used in 46 CFR subpart 162.060, and we updated the incorporation by reference section in that subpart to more clearly indicate those standards being incorporated into this regulation.

We deleted 33 CFR 151.2075(c), which referred to an assessment of vessel compliance with the now obsolete voluntary national program. That assessment has been completed for several years; therefore, it is no longer necessary to refer to it in the regulations.

We revised § 151.1510(a)(1) to clarify when BWE must be conducted. We also revised paragraphs (a)(3) and (d) of that section to improve readability and clarify requirements. Similar revisions were made in § 151.2025, also to improve readability and clarify requirements.

We corrected the BWDS in both subparts C and D to align with the IMO BWM Convention.

We removed proposed 33 CFR 151.2045 ''Safety exceptions,'' as we determined that those provisions were largely repetitive to what was proposed in 33 CFR 151.2040, entitled ''Discharge of ballast water in extraordinary circumstances.'' We moved the one non-repetitive provision to § 151.2040. As a result, § 151.2040 now includes the provision noting that nothing in the regulations relieves the master, owner, agent, or person in charge of the vessel from any responsibility, including the safety and stability of the vessel and the safety of the crew and passengers.

Throughout the regulatory text, we updated addresses for the Coast Guard Marine Safety Center, also adding in an email address option. We updated cross-references where necessary, and made changes to remove passive tense from the requirements. These changes improve the readability of the regulation, and clarify requirements.

We made a number of non-substantive changes to the approval procedures found in 46 CFR subpart 162.060. Like many of the changes we are making, these changes improve the readability of the regulation, and clarify requirements. We also revised the regulatory text that was proposed in 46 CFR 162.060–40. In the NPRM, that section included all requirements for ILs. In this final rule, we have split those requirements into two sections (46 CFR 162.060–40 and 162.060–42). The first section includes requirements for ILs applying for Coast Guard designation; the second section now contains the responsibilities imposed on ILs once they are designated by the Coast Guard.

These changes result in more easily understandable regulations, but do not make substantive changes. For this reason, the Coast Guard has determined that further notice and comment on the changes is unnecessary, pursuant to 5 U.S.C. 553(b).

B. Discussion of Comments

We received 662 comment letters on our NPRM, which contained 2,214 individual comments. We have divided our discussion of these comments into subject matter topics, and our responses are laid out in the following sections.

1. Applicability

One hundred and thirty four commenters addressed the applicability of the proposed regulations. Of these, 39 requested an exemption based on the segment of industry in which their vessel is engaged. These industry segments include: towing vessels and barges; offshore energy services support vessels; commercial fishing vessels; passenger vessels; offshore floating platforms; and vessels operating solely in the Great Lakes.

Many commenters generally criticized the application of the BWDS to their specific type of vessel. Forty eight commenters stated that various aspects of the design or operation of their vessels make it infeasible for them to practicably install a BWMS. The cited constraints include lack of space, lack of ballast piping, insufficient power available onboard, independent pumps and piping for each tank, insufficient BW holding times and pumping capacities in excess of current BWMS capabilities.

As we have discussed in this preamble, we have revised the applicability of this final rule so that the BWM requirements primarily apply to vessels with ballast tanks operating in waters of the United States after having operated outside of the EEZ (*see* V.B. Summary of Changes from the NPRM). Certain other vessels that operate exclusively in the EEZ and in more than one COTP Zone, and that meet certain size thresholds that make them similar to vessels operating on international routes are also required to comply. The Coast Guard, however, intends to expand this applicability in the near future after further study and will keep these commenters' requests in mind. We have also added, as discussed above, a provision for vessel owners who are required to comply with the BWDS but cannot do so for good reason (such as design and operating conditions or unavailability of systems) to request a delay in their compliance date.

Vessels Operating Solely in the Great Lakes

Twenty one commenters asked that vessels operating solely in the Great Lakes be treated differently from seagoing vessels due to the constraints cited above. Those commenters also requested that they be allowed to continue the best management practices currently in place instead of being required to install BWMS.

Conversely, 35 commenters urged the Coast Guard to regulate vessels operating solely in the Great Lakes. Five commenters asked the Coast Guard to hold vessels operating solely in the Great Lakes to the most stringent BWDS possible. One of these commenters submitted a petition with 8,905 individual signatures in support of stronger regulation of vessels that operate exclusively in the Great Lakes.

One commenter supported regulating vessels operating solely in the Great Lakes but felt the regulatory priority should be on preventing introductions of aquatic NIS by oceangoing vessels. Two commenters supported expanded regulation of vessels operating solely in the Great Lakes, but asked that the regulations take into account the unique design and operating characteristics of these vessels. Twenty seven additional commenters supported regulating this vessel population without providing a specific reason.

For the reasons we have discussed in this preamble, we are not requiring vessels that operate exclusively in the Great Lakes to comply with the BWDS in this final rule (*see* V.B. Summary of Changes from the NPRM). The Coast Guard intends to re-examine this decision in the near future, and will keep these commenters' requests in mind when developing subsequent rulemakings.

Municipal Water as Ballast

Twenty commenters urged the Coast Guard to exempt vessels from having to treat their ballast water if the water was obtained from a municipal water supply, as they believe this poses little risk of introducing or spreading NIS in

waters of the United States. The commenters stated that this is a common practice for inland towing vessels and/or barges, offshore energy services, and small business interests, and is authorized under existing Coast Guard policy.

Fifteen commenters proposed that vessels should be allowed to use municipal or potable water for ballast water. These commenters also proposed that vessels should be permitted to discharge that water into waters of the United States without having to use a Coast Guard-approved BWMS or to meet the BWDS.

The Coast Guard agrees that, in some situations, ballast water does not pose a significant threat of introducing or spreading NIS. We have some concerns about the variable quality of municipal water sources, but believe that water that satisfies the standards of the Safe Drinking Water Act (42 U.S.C. 300f–300j) should be acceptable for use as ballast water without posing a significant threat of introducing or spreading NIS. As a result, we have revised the regulation to allow for use of water from a U.S. public water system (PWS) meeting the requirements of the Safe Drinking Water Act as an alternative to installing a BWMS meeting the BWDS. We note, however, that with the exception of PWS water used under extraordinary circumstances in accordance with 33 CFR 151.1515, a vessel must exclusively use PWS water as ballast. Any mixture of water obtained from a source other than a facility meeting the requirements of the Safe Drinking Water Act will negate acceptability of water from a PWS as discharged ballast water. This change is found in 33 CFR 151.1510(a)(4) and 151.2025(a)(2).

COTP Zones

Seven commenters urged the Coast Guard to not grant regulatory exemptions for vessels operating exclusively in a single COTP Zone. They noted that these zones are not ecologically meaningful subdivisions and asked that any boundaries be based on scientific analysis of the risk of transferring invasive NIS.

Conversely, 17 commenters urged the Coast Guard to provide exemptions for vessels that operate exclusively in a single COTP Zone or conduct all ballast operations in a single COTP Zone. They argued that these practices would pose minimal environmental risk.

Four commenters requested a correction to the regulatory text to ensure that the proposed exemption for vessels operating exclusively in one COTP Zone (33 CFR 151.2015) extends to the BWM requirements (33 CFR 151.2025), consistent with the description of this provision in the preamble to the NPRM. One commenter called for the Coast Guard to continue to exclude vessels operating exclusively within one COTP Zone from the requirement to meet the BWDS.

For the reasons discussed earlier in this preamble, the BWM provisions of this final rule will not apply to vessels operating exclusively in a single COTP Zone (*see* V.A. Summary of Changes from the NPRM). The issue of whether there are distinct zones or areas other than COTP Zones where it might be appropriate to include an exemption for vessels that do not leave that zone or area remains open to consideration. The Coast Guard will investigate other possible ways to craft a geographic exemption, using suggestions from commenters and our Federal agency partners. The Coast Guard has determined that, for now, this is the best applicability delineation for the regulation based upon the available information and the Coast Guard's needs in effectively administering the ballast water program. The Coast Guard intends to re-examine this decision in the near future, and we will keep these commenters' requests in mind as we develop subsequent rules.

This rulemaking project has highlighted the need for additional research and analysis for ballast water regulatory efforts. A primary source of data for this research and analysis is the Ballast Water Reporting Form (available on the NBIC Web site at *http://invasions.si.edu/nbic/submit.html*), which vessels operating exclusively within a single COTP Zone are currently exempted from completing. In the future, the Coast Guard may initiate a separate rulemaking to expand the number of vessels submitting ballast water reports so that we can meet the statutory requirements for maintaining a clearinghouse on national ballast water data, and to collect additional data for use both in future regulations, and in future practicability reviews.

Great Lakes and Gulf of Mexico Ecosystems

Twenty two commenters urged the Coast Guard to designate the waters of the Ninth Coast Guard District as a single COTP Zone and exempt vessels operating exclusively in that zone from BWM requirements. In support of this position, the commenters noted that a ballast water bill passed by the U.S. House of Representatives in 2008 determined that the Great Lakes were an ''enclosed aquatic ecosystem'' and exempted vessels that confine their operations to those waters from installing BWMS.

Ten commenters suggested that vessels operating exclusively in the Gulf of Mexico be exempt from BWM requirements. In support of this position, the commenters noted a high level of connectedness between different areas of the Gulf of Mexico and the fact that the National Oceanic and Atmospheric Administration considers the Gulf of Mexico to be a single ''Large Marine Ecosystem'' based on ecological criteria.

The Coast Guard acknowledges the issues raised in these comments and will continue to work with the scientific community and regulatory agencies to investigate the bases for establishing more ecologically meaningful geographic zones for regulating ballast water operations.

Other Applicability

Two commenters urged the Coast Guard to consider the use of land-based or vessel/barge-based reception/treatment facilities. The Coast Guard agrees that use of shore-based or barge-based treatment might become a valid option for some vessels and has provided for this in the final rule. We have done so by revising the language in the regulations to make it clear that the BWDS only applies to those vessels falling within the rule's applicability thresholds (vessels that also discharge ballast water into waters of the United States). Those vessels discharging to land-based or vessel/barge-based reception/treatment facilities would not fall within this defined group, and therefore would not be required to install a BWMS that meets the BWDS. Any reception/treatment facilities used under this option would be subject to applicable state and local laws, as well as NPDES permitting if the treated water is discharged to waters of U.S.

Four commenters requested that the Coast Guard exempt any vessel that does not discharge ballast water in waters of the United States. Three additional commenters argued that vessels not discharging ballast water into the waters of the United States should not be subject to the requirement to install BWMS.

It was never the intention of the Coast Guard to require vessels to install a BWMS if they do not discharge ballast water into waters of the United States. We have clarified in this final rule that vessels not discharging ballast water into the waters of the United States are not required to install a BWMS. However, unless exempted, vessels are still required to report their BWM

practices on their Ballast Water Reporting Form.

One commenter suggested that applicability be based on a vessel's ballast water capacity. The Coast Guard notes that applicability of the rule is based, in part, on vessel ballast water capacity. While the discharge standard does not vary by vessel type, the dates at which vessels must meet the ballast water discharge standard if using a BWMS are based on vessel ballast water capacity.

As we move forward with expanding the applicability of this rule, however, we will continue to consider multiple factors, including ballast water capacity.

One commenter recommended exempting offshore floating platforms from the regulations, as these facilities rarely move. The Coast Guard does not believe that a categorical exemption is warranted. Under this final rule, an offshore floating platform would be exempted as long as it conducts ballast operations exclusively within a single COTP Zone. Additionally, we believe there are operational practices (e.g., offload to a reception vessel) that will allow an offshore floating platform to comply with the BWM regulations without having to install a BWMS.

One commenter suggested exempting reduced operating status (ROS) vessels that spend the majority of their time in layup or reduced crew status and are activated for short times (Maritime Administration Ready Reserve or Military Sealift Command vessels). The Coast Guard believes that if a vessel is not operating, it should not be discharging ballast water and there would be no requirements to meet when in ROS. In addition, in the event an ROS vessel meets the definition of a vessel of the Armed Forces under Section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322), it would be exempt from this final rule by section 151.2015(a)(191).

One commenter asked that exemptions and exceptions in the rule be consistent with the IMO BWM Convention. The Coast Guard believes that the commenter was referring to exemptions to the requirement to meet a BWDS that nation states could grant under the IMO BWM Convention once it enters into force. It is the Coast Guard's position that all vessels should take all practicable measures to ensure NIS are not discharged into the waters of the United States from vessels through ballast water; however, we note that we have included exemptions and exceptions in this final rule that are consistent with both our statutory mandate under NANPCA, as amended by NISA, and international law, including but not limited to the IMO BWM Convention (which has not yet entered into force). We will continue to develop our regulations and work with other countries to protect our environment.

2. BWDS

General Concern

Eighteen commenters submitted general concerns on the BWDS. Seven commenters stated their general opposition to the NPRM and three commenters stated their general support. Two commenters believed there was insufficient scientific and technical support in the record for the proposed regulation.

Four commenters stated that the BWDS and implementation schedule must be protective of the Great Lakes and one commenter expressed this concern for all waters of the United States. One commenter requested that the final regulations reflect reasonable and balanced programs that harmonize the commercial importance and environmental value of the Great Lakes.

The Coast Guard acknowledges these general concerns. Many of these concerns are echoed in more specific comments that we received, and those are summarized and addressed previously in this preamble and in the text that follows.

Support Concept

Twelve commenters supported the concept of a numeric, concentration-based BWDS, and three commenters said that such a BWDS will create the necessary market conditions to encourage investment in and development of technologies capable of achieving the objective of this rule. The Coast Guard agrees with these comments, and believes that setting a numeric, concentration-based BWDS in this final rule is the best approach to reducing the threat of the introduction and spread of NIS into the waters of the United States.

Stringency of Standard

One commenter supported the idea of a U.S. BWDS that at least meets the IMO BWM Convention Regulation D–2 discharge standard (IMO discharge standard) and any subsequent standard improvements. Another commenter stated that although they support the development of a BWDS like the phase-two standard, they also believe that starting with the achievable, measurable, and protective phase-one standard poses a much lower risk to the environment than starting with a stricter standard that is unachievable and immeasurable.

Six commenters supported establishing a discharge standard that is more stringent than the proposed phase-one standard, two of which also said the implementation schedule would not be protective as quickly as needed. Six commenters supported the proposed phase-two standard that is equivalent to the most stringent State standards, currently 1,000 times more stringent than the IMO discharge standard. One commenter said that the standard should be alternative 5 of the Draft Programmatic Environmental Impact Statement (DPEIS), which is essentially sterilization of ballast water.

One commenter stated that they did not support the adoption of a standard more stringent than the IMO discharge standard due to the impracticability of performing the necessary measurements to approve BWMS and test compliance.

One commenter stated that no technology developers with whom they have discussed treatment efficacy have been willing to provide assurances that their BWMS could reliably meet the phase-two standard, which is 1,000 times more stringent than the IMO discharge standard. This commenter further disagreed with the California State Lands Commission's (CSLC) conclusion that several BWMS have demonstrated the potential to comply with California's performance standards for the discharge of ballast water, and called for the Federal Government to perform its own analysis when conducting the practicability review prior to full implementation of the phase-two standard.

One commenter noted that the Great Lakes are a drinking water source and an irreplaceable freshwater natural resource. This commenter stressed the importance of implementing strong environmental regulations to protect such waters from the introduction of new NIS as well as from the establishment of new populations of NIS that currently exist within these waters.

Two commenters noted what they termed a lack of sufficient scientific and technical support in the record for the proposed regulation.

As we have noted in this preamble, this final rule is implementing the phase-one standard, which is equivalent to the IMO discharge standard, and deferring action on the phase-two standard until we can complete more analyses and research into practicability (*see* V.A. Summary of Changes from the NPRM).

The EPA SAB study (EPA SAB 2010), issued after publication of the NPRM for this rulemaking, provides support for our conclusion that technology to

achieve the IMO discharge standard represents the limit of current practicability. The SAB found that ''* * * five of 34 categories of assessed BWMS achieved reductions in organism concentrations sufficient to comply with the first standard proposed by the USCG (i.e., the 'Phase 1' standard).'' Further, the SAB also concluded that '' * * * current test methods and detection limits preclude a complete statistical assessment of whether a BWMS meets any standard more stringent than Phase 1'' (U.S. EPA SAB, 2011). We agree with the commenter who stated that implementing a less stringent, attainable standard that provides at least as much protection as BWE as soon as possible provides more protection than establishing a stricter standard and continually postponing it or deferring enforcement until it is achievable. We note the findings and recommendations of the National Research Council's (NRC) Committee on Assessing Numeric Limits for Living Organisms, which concluded that ''The current state of science does not allow a quantitative evaluation of the relative merits of various discharge standards in terms of invasion probability.'' The Committee further recommended that ''(a)s a logical first step, a benchmark discharge standard should be established that clearly reduces concentrations of coastal organisms below current levels resulting from ballast water exchange (such as the IMO D–2 standard).''

While the Coast Guard agrees that it is necessary to have a protective standard in place as quickly as possible, we have delayed the initial implementation dates for newly constructed vessels to allow for the implementation of the U.S. type-approval process. The Coast Guard does not believe that it is possible to implement this process any faster, and that such a deferral is inevitable.

The Coast Guard disagrees with the commenters who stated there was an insufficient record for the NPRM as a whole. While we have already acknowledged that more analysis on the impacts of the phase-two standard should be completed, both the economic and environmental analyses that accompanied the NPRM contained information that, when combined with our discussion of the proposed rule in the NPRM preamble, provided reasonable justification for the NPRM.

Zero Discharge

Fifteen commenters advocated for the establishment of a zero-discharge standard, and said there should be no living organisms allowed in ships' ballast water. Four commenters said that NISA requires the Coast Guard to establish such a zero-discharge standard.

Conversely, three commenters opposed setting a zero-discharge standard, which they claimed would be operationally and practically unachievable. One commenter stated that the current knowledge of invasion biology seems to be insufficient to define no-risk discharge criteria.

Two commenters stated that the long-term goal should be zero discharge of live organisms.

The Coast Guard disagrees that NISA requires a zero-discharge standard. NISA requires the Coast Guard to develop regulations that prevent the introduction and spread of NIS to the maximum extent practicable, and we have no data that support setting a zero-discharge standard as being practicable. However, the Coast Guard is committed to implementing the most stringent BWDS that can practicably be achieved. As evidence of this, the Coast Guard has already indicated in this preamble that in a subsequent publication, after additional analysis and research, we intend to finalize the proposed phase-two standard or any standard higher than phase-one, as well as the recurring practicability reviews that were included in the NPRM, with the goal of determining and achieving the most protective BWDS practicable (*see* V.A. Summary of Changes From the NPRM).

Phase-One Standard

Fourteen commenters stated their support for the phase-one standard that is equivalent to the IMO discharge standard. One commenter requested that the phase-one standard become the permanent standard for the United States.

The Coast Guard agrees with the commenters who supported the phase-one standard, as we believe this standard is practicable, achievable, and provides a level of protection that is at least as effective as BWE. However, the Coast Guard also believes that future work, such as that suggested by the EPA SAB (EPA SAB 2011) and the NRC Committee (NAS 2011), may result in a better understanding of the need for more stringent standards and the development of improved technologies for treating ballast water on vessels, and will continue to work toward improving protective requirements in accordance with the directions and authorities in NANPCA 90.

Thirteen commenters opposed the phase-one standard on the grounds that it was not sufficiently protective. One commenter proposed that the phase-one standard be set at 10 times more stringent than the IMO discharge standard, 5 commenters proposed that the phase-one standard be set at 100 times more stringent than the IMO discharge standard, and 4 commenters proposed that the phase-one standard be set at 1,000 times more stringent than the IMO discharge standard, which would be the equivalent of the proposed phase-two standard.

One commenter suggested dropping the phase-one standard and immediately undertaking a practicability review of the phase-two standard, which the commenter believed would result in an indefinite deferral of the phase-two standard as non-practicable. One commenter opposed the phase-one standard proposed in the NPRM without giving specific reasons.

The Coast Guard has found, based on the best scientific information available to the Coast Guard (including the previously referenced EPA SAB study on technologies and systems to minimize the impacts of invasive species in vessel ballast water discharge (EPA SAB 2011)), that there are currently no BWMS that have demonstrated the capability to meet a standard more stringent than the phase-one standard. Additionally, there are no available, standardized testing protocols that can be used to demonstrate that a BWMS can meet a standard 100 or 1,000 times more stringent than the phase-one standard.

Implementing both the phase-one and a more stringent but unachievable standard in a single rulemaking would result in foregoing the near-term protection this rulemaking provides. The Coast Guard believes ensuring this near-term protection now is in line with our statutory mandate from NANPCA, as amended by NISA. As we explained in this preamble, we are not abandoning the phase-two standard (*see* V.A. Summary of Changes from the NPRM). We are committed to implementing a standard that provides the most protection that can practicably be achieved.

One commenter opposed the phase-one standard on the grounds that it would be difficult to assess and therefore enforce. The Coast Guard disagrees. The EPA has already issued its ETV Protocol, which is incorporated by reference into this final rule and will be used to assess a BWMS' success in meeting the BWDS. The Coast Guard's type-approval process provides a strong means of verifying whether a BWMS can likely achieve the BWDS when installed and operating. Finally, Coast Guard port-state control officers will provide the final enforcement check to

ensure that a BWMS is operating as it should to meet the BWDS.

One commenter requested a modification to the phase-one standard to account for organisms less than 10 micrometers in size. The Coast Guard disagrees that this is necessary for the phase-one standard, as the IMO discharge standard did not include this size category. We may consider additional size categories for the phase-two standard.

Two commenters requested that the phase-one standard be aligned with the IMO discharge standard and other provisions of the IMO BWM Convention. The Coast Guard believes that we have made the phase-one standard as consistent as possible with the IMO discharge standard. We have made a slight adjustment in our implementation schedule to allow for practical realities involved in implementing a U.S. type-approval program, but we have also included a provision to allow for BWMS that have been approved by foreign administrations under the IMO BWM Convention to be accepted on an interim basis (*see* discussion in V.A. Summary of Changes from the NPRM).

Phase-Two Standard

Thirteen commenters supported the phase-two standard as proposed in the NPRM. One commenter stated that vessels would benefit by having to install a BWMS only once at a potentially more protective standard. One commented that adopting the phase-two standard would encourage manufacturers to modify existing BWMS components and develop new technologies that could meet multiple stringency standards.

Conversely, 47 commenters opposed the phase-two standard as being counterproductive on the grounds that there are no accepted test protocols or BWMS that have been proven to meet any limits more stringent than phase-one. Two commenters opposed the phase-two standard because BWMS manufacturers have focused their research, development, and certification efforts on the IMO discharge standard, and may not have the resources to start over.

One commenter requested that a size category for organisms less than 10 micrometers be added to the phase-two standard. Two commenters requested removing the phase-two standard for viruses due to the impracticability of treating for viruses and the difficulty of testing virus viability. One commenter stated there are no technologies, scientific methods, or protocols to differentiate between active versus inactive virus-like particles, which would make it impossible to measure the efficacy of BWMS in achieving the proposed phase-two standard for viruses.

Two commenters said that the phase-two standard should only allow for use of less stringent standards under temporary special exemption cases (e.g., vessel types or discharge characteristics) as determined by a technology review. One commenter suggested an interim measure like Michigan's BWM regulation, which identified specific treatment processes. The commenter believed that such an approach could be implemented across the Great Lakes more quickly than the proposed standards.

Three commenters stated that the phase-two standard should be delayed until instrumentation and methods are available to measure the capability of BWMS to meet the standard. One commenter stated that the phase-two standard is unnecessarily stringent for vessels that operate in the Great Lakes. One commenter stated that the phase-two standard should not have a defined value before the results of the practicability review are known.

One commenter opposed the phase-two standard for vessels that operate solely on the Great Lakes, arguing that the large volumes of treated water being discharged would essentially distill the Great Lakes of essential organisms necessary for aquatic health.

One commenter stated that one BWMS could meet multiple stringency standards by adjustment of its operational parameters, although this may depend on the treatment methodology of a particular system.

One commenter recommended that phase-two technologies should be based on conversions of the existing phase-one platforms.

As we have discussed in this preamble, this final rule only contains implementation requirements for the phase-one standard (*see* V.A. Summary of Changes from the NPRM). We are taking all of the comments we received on the phase-two standard into consideration as we begin the process of completing economic and environmental analyses for the phase-two standard, and will continue to consider these comments as we draft a notice or other rulemaking document addressing the phase-two standard.

Grandfather Period

Seven commenters opposed any grandfather period. Two of these commenters argued that vessels that install a phase-one system should not be exempt from the phase-two standard. One of these commenters requested that best available technology be required at all times, which would eliminate the use of a grandfather period.

One commenter stated that the grandfather period should be decreased from 5 to 3 years, whereas two commenters argued that 5 years was an appropriate grandfather period.

Fifteen commenters stated that 5 years was not long enough for a grandfather period. Twelve commenters stated that an installed BWMS should be grandfathered for the useful life of the vessel, and 10 commenters stated that BWMS should be grandfathered for the effective life of the system. Fourteen commenters stated that an installed BWMS should be grandfathered for the life of either the vessel or BWMS, whichever ends first.

One commenter stated that the grandfather period should be increased from 5 years to 10 years or the lifetime of the vessel, one commenter stated that it should be increased to 15 years, two commenters stated that it should be increased to 15 years or the life of the vessel, and one commenter stated that vessels should be given a specific date by which to upgrade once a phase-two standard is established.

As discussed in this preamble in V.A. Summary of Changes from the NPRM, the Coast Guard is not including the phase-two standard in this final rule. Because the final rule only includes the phase-one standard, we have omitted the grandfather provision that we proposed in the NPRM. We expect to reconsider the grandfather provision when we address the proposed phase-two standard or any standard higher than phase-one in a notice or other rulemaking document. We will keep these comments in mind as we develop that proposal.

Practicability Review

Thirty nine commenters supported a practicability review that is sufficiently robust and comprehensive to determine whether a BWDS more stringent than the phase-one standard is achievable. One of these commenters said that the review should be limited to the testing and certification requirements of the IMO BWM convention and guidelines. Six commenters recommended that the practicability review ensure that any phase-two standard is effective, measurable, technologically feasible, commercially available, safe, and cost-effective for use with the characteristics of the vessel.

One commenter said the regulation should contain an express statement that the Coast Guard will not make upward revisions of the treatment

standard unless it is economically reasonable to do so, and that we should include criteria for that determination. Another commenter said that if and when a BWMS can achieve the phase-two standard of 1,000 times more stringent than the IMO discharge standard, no further practicability reviews should be conducted with regard to achieving even higher standards.

Ten commenters said that a practicability review should be conducted for the phase-one standard as well. Twenty three commenters said that the reviews must verify there are BWMS that are suited to the volumes, flow rates, and engine room specifications of Great Lakes vessels before imposing the phase-one standard on these vessels.

Six commenters agreed with the proposed 3-year cycle for practicability reviews, seven recommended that the reviews be conducted on a continuous basis, three recommended that the reviews be conducted every year, one suggested a 3- to 5-year cycle, and three recommended a 5-year cycle.

Six commenters wanted a firm deadline for practicability reviews. Six others stated that the timing and scope should be accelerated from 2010 to 2012 to inform both the phase-two standard and the 2013 renewal of the EPA VGP.

Conversely, 19 commenters opposed any practicability review that could indefinitely delay implementation of the final standard, calling it a ''loophole.'' Eight of these commenters requested an electronic docket and public comment period before any final determinations based on practicability reviews are made. One commenter stated that moving the practicability review would not allow time for vessels with a 2014 compliance date to implement technology that meets the phase-two standard. Two commenters said there is no evidence presented in the NPRM or DPEIS to justify claims that the phase-two standard is not currently achievable, and therefore the practicability review is not necessary.

Three commenters requested a definition for ''practicability'' and for the inclusion of specific content and format of the review. One commenter said the rule should place an upper limit on how long the implementation date can be extended at any given time. One commenter stated that there should be a practicability review for vessels based on the type of vessel and the geographic route(s) it serves, (i.e., ocean-going service, inland waters, Great Lakes, near coastal, etc.).

As discussed in this preamble in V.A. Summary of Changes from the NPRM, because we have removed the phase-two standard from this final rule, we have also removed the recurring practicability reviews that were included in the NPRM. We expect that regular assessments, per NISA's ''[p]eriodic review and revision'' provisions, codified at 16 U.S.C. 4711(e), will be part of any future rulemaking process. This will address the scenario in which a finalized phase-two standard either cannot be implemented according to the established timelines, or can be implemented more quickly than the established timeline.

There is one practicability review provision included in this final rule that requires the Coast Guard to complete and publically publish the results of a practicability review no later than January 1, 2016. This review will draw a significant component of its information from the type-approval application packages that the Coast Guard expects to evaluate between this final rule's publication date and the initial implementation date. Further, the findings and recommendations of the EPA SAB study (EPA SAB 2011) will usefully inform the development of the practicability review. The Coast Guard will look at a variety of factors, including but not limited to the efficacy and environmental safety of available technology, and economic factors. While we have listed a number of these factors in the rule, there is a provision allowing for consideration of additional factors. We included this provision because of the possibility that the Coast Guard may discover additional factors that would be relevant to a decision on whether or not it is practicable to increase the stringency of the BWDS.

These changes address some of the comments summarized previously. We will continue to keep comments related to the recurring practicability reviews in mind as we develop a notice or other rulemaking document implementing the phase-two standard. While we have not included a practicability review prior to the implementation of the phase-one standard, we have included a provision to allow vessel owners and operators to request an extension of their compliance date if they cannot practicably comply with the compliance date otherwise applicable to their vessel. Summary information concerning all extension decisions, including the name of the vessel and vessel owner, the term of the extension, and the basis for the extension will be promptly posted on the U.S. Coast Guard Maritime Information Exchange Web site (CGMIX), currently located at [*http://cgmix.uscg.mil/Default.aspx*].

Implementation Schedule

One commenter was opposed to extending the phase-two deadline unless a future public comment period establishes that such an extension is necessary to allow for practicable implementation of the phase-two standard. Four commenters agreed with the proposed schedule for implementation of both the phase-one and the phase-two standards.

Eighty one commenters requested that the implementation schedule be changed in some way. Eleven commenters stated that a BWDS should take effect immediately, and one commenter said it should be implemented in 1 year. One commenter said the phase-two standard should take effect immediately, while another said that 3 to 5 years is plenty of time. Three commenters stated that the phase-two standard should take effect by 2012 and one said it should take effect by 2016. Three commenters opposed reliance on drydocking schedules in favor of hard deadlines for compliance, unless justified by vessel-specific engineering constraints or lack of availability.

One commenter stated that existing vessels should be required to schedule their first drydocking by 2012, and to comply with the phase-one standard by 2014 unless the practicability review deems that deadline unattainable. One commenter suggested installation at the first dry dock after 2014. Two others suggested that a more appropriate timeline for all new and existing vessels would be 2012 or 2014, respectively.

Thirty three commenters said that the phase-one standard should be implemented by 2012 and the phase-two standard by 2016. Another commenter agreed with this schedule but with a more stringent phase-one standard. One commenter supported a phase-one standard 100 times more stringent than the Coast Guard's proposal by 2012 and a phase-two standard 1,000 times more stringent than phase one by 2016.

Two commenters considered the schedule for implementation of the proposed regulations to be too protracted, and called for implementation of the phase-two standard at an earlier date than proposed. These organizations did not support allowing shipowners so much time between the implementation date and their first scheduled drydock.

Conversely, 26 commenters requested that the implementation schedule be lengthened or allow more flexibility for vessel types or specific geographic areas. Thirteen commenters said that the dates should be delayed until

compatible BWMS are commercially available for their vessels and to accommodate standard drydocking cycles of twice in 5 years. One commenter said that vessels traveling to specific areas such as the Great Lakes could comply with the 2014 date, but did not think this was a realistic option to apply to vessels in all waters of the United States.

One commenter stated that the proposed schedule does not allow enough time for vendors to develop BWMS capable of meeting the phase-two standard, particularly since methods and facilities capable of testing to the phase-two standard will need to be available in order to develop such systems.

One commenter stated that vessels confined to the Great Lakes will not have sufficient shipyard availability to install equipment to meet the BWDS on the proposed schedule. Four commenters stated that some vessels operating in the Great Lakes have very short voyages (on the order of hours). If BWMS available for such vessels are limited to chemical systems with required minimum treatment times longer than the voyages, then significant delays will occur in the transportation chain. Two industry associations commented that the proposed schedule was not feasible due to a lack of available BWMS and a shortage of shipyard capacity for installation.

The Coast Guard considered these comments. First, to accommodate the implementation of the final rule in relation to delays encountered in the rulemaking process, the Coast Guard has revised the implementation schedule for the phase-one standard at 33 CFR 151.1512(b) and 151.2035(b) to provide new vessels the 2 years for implementation as presented in the 2009 proposed rule. Addressing concerns with the schedule more generally, while we agree with those commenters who would like to see a requirement that BWMS be installed on vessels as soon as possible, it is important to consider several factors that impact the timeline during which approved BWMS can be expected to be installed. These include the time required for the United States to implement a BWMS approval process, for manufacturers to establish production capacity, and for vessel owners to acquire and install BWMS within their vessels' normal operational and maintenance schedules. As a result, there will likely not be an adequate number of approved BWMS to allow for acceleration of the implementation schedule in the 2009 proposed rule. Phase-two and its implementation schedule are not addressed in this final rule. As discussed in the ''Summary of Changes from the NPRM'' section above, the Coast Guard will develop additional analyses regarding the potential costs, benefits, and environmental impacts of the proposed phase-two standard or any standard higher than phase-one and intends to address the issue in subsequent rulemaking document.

Language Clarification/Technical Change

One commenter requested that the proposed BWDS include language necessary for differentiation between living and nonliving organisms. Another said that the standard should allow for the presence of nonliving organisms since some treatment technologies act to kill living organisms without necessarily removing them from the ballast water.

The Coast Guard acknowledges that the proposed BWDS is slightly different in this respect from the IMO discharge standard, which uses the term ''viable'' instead of ''living.'' It is important to note that, while the text of the IMO BWM Convention refers to ''viable'' organisms, the G8 guidelines define ''viable'' as ''living.'' Therefore, the Coast Guard has decided that this issue is best addressed in the BWMS approval process, and will not alter the standard as suggested by these commenters. We note that the standard and approval process do allow for the presence of nonliving organisms. Additionally, we corrected a technical error present in the NPRM, which mistakenly omitted the term ''living'' from the proposed 33 CFR 151.1511(a). This final rule corrects that omission.

One commenter requested an addition to the BWM requirements in 33 CFR 151.2025(a)(1) that would read ''(i) Unless 151.2040(b) allows otherwise, the BWMS must be used prior to any discharge of ballast water to waters of the U.S. (ii) All treatment must be conducted in accordance with the BWMS manufacturer's instructions and standard of performance approved by the Coast Guard.''

The Coast Guard disagrees that this addition is necessary. Vessel owners/operators must comply with the BWDS for all ballast water discharged following treatment with a BWMS, and follow the manufacturer's Operation, Maintenance, and Safety Manual to maintain their systems in proper working order.

One commenter asked that a definition be provided for ''regular'' and ''regularly,'' as those terms are used in 33 CFR 151.2050, which requires vessels owners or operators to clean their ballast tanks regularly to remove sediments and to remove fouling organisms from hull, piping, and tanks on a regular basis. The Coast Guard disagrees, and believes that there should be some flexibility to schedule these activities according to a vessel's specific circumstances.

One commenter believes that portions of 33 CFR 151.2050 (additional requirements) are intended to be discretionary rather than mandatory, and should be separate categories. The Coast Guard disagrees. The Coast Guard included the term ''minimize or avoid'' in 33 CFR 151.2050(b) to ensure that vessel owners and operators always consider these additional requirements, while allowing some flexibility according to a vessel's specific circumstances.

One commenter suggested adding a definition for ''test report'' at 46 CFR 162.060–3, as the term is used in multiple places. The Coast Guard disagrees, as the Test Report is described in 46 CFR 162.060–34.

One commenter suggested revising the proposed definition for ''hazardous location'' found in 46 CFR 162.060–3. The Coast Guard agrees and revised the definition.

One commenter suggested requiring contact information, in addition to manufacturer's name, in 46 CFR 162.060–10(a)(1). This commenter also suggested that the phrase ''Name and type of BWMS'' in 46 CFR 162.060–10(a)(3) be revised to also require the mode of action or other information. The Coast Guard partially agrees; we have added a requirement for point of contact information for the manufacturer to 46 CFR 162.060–10. However, we have not made the requested change to 46 CFR 162.060–10(a)(3), as we believe this is already reflected in the existing text.

One commenter asked that the phrase ''novel processes'' in 46 CFR 162.060–10(e) be defined. The Coast Guard disagrees, because it does not wish to preclude any innovative approaches in BWMS.

One commenter asked whether the IL or manufacturer is required to submit the Test Report to the Coast Guard Marine Safety Center (MSC) as part of the approval process. The Coast Guard approval process places responsibility on the manufacturer to submit all necessary materials to the MSC, however, it is acceptable if the IL submits the report directly to the MSC.

One commenter was unsure what types of approvals are required under 46 CFR 162.060–14(a)(7), such as those from U.S. agencies, foreign administrations, classification societies,

and other organizations. The Coast Guard's response is that 46 CFR 162.060–14(a)(7) pertains to approval of BWMS using active substances, and that manufacturers are responsible for obtaining all required approvals external to the Coast Guard's approval process. We anticipate issuing guidance documents to aid manufacturers in complying with the approval process.

One commenter noted what appeared to be conflicting information as to exactly which vessels this rule would apply to and whether all vessels would be required to install BWMS. The Coast Guard responds that these are separate but related questions. First, 33 CFR 151.1502 in the existing regulations and 33 CFR 151.2010 (Applicability) of this final rule describe which vessels will be required to comply with 33 CFR part 151 subparts C and D, or subsections of them. This is a broad description, as many vessels not required to install a BWMS will need to comply with other requirements in 33 CFR part 151 subpart D, such as recordkeeping requirements. Several groups of vessels are exempted from BWM requirements under § 151.2015.

Secondly, 33 CFR 151.2025 (BWM requirements) of the final rule identifies which vessels must install a BWMS that complies with the BWDS, or manage their ballast water in another one of the methods listed in that section.

One commenter requested clarification of the requirement ''Records any bypass of the BWMS'' at 46 CFR 162.060–20(b)(5). The commenter noted that not all BWMS will be able to do this, as some bypasses may be achievable using systems or components that are outside of the BWMS. The Coast Guard agrees and has removed this provision.

Management Requirements

Two commenters suggested that the practicability of on-shore or vessel/barge-based ballast water treatment be explored. The Coast Guard encourages the development of alternative treatment methods that would allow some vessels to manage their ballast water without having to install a BWMS. The phase-one standard in this final rule will only apply to vessels that discharge ballast water into waters of the United States. Vessel owner/operators discharging ballast water to a facility onshore or to another vessel must ensure that all vessel piping and supporting infrastructure up to the last manifold or valve immediately before the dock manifold connection of the receiving facility or similar appurtenance on a reception vessel prevents untreated ballast water from being discharged into waters of the U.S.

Once Ballast water is pumped to an on shore treatment facility or a treatment vessel it would not be subject to 33 CFR part 151 subpart C or D. However, under the CWA any resulting discharges from these on-shore treatment facilities or treatment vessels are subject to the National Pollutant Discharge Elimination System (NPDES) program. Companies that intend to provide these services will be responsible for complying with these and other local, state, and Federal laws and regulations.

One commenter suggested requiring BWMS in addition to, rather than instead of, existing BWE requirements for ocean going vessels entering the Great Lakes-St. Lawrence Seaway system. The Coast Guard disagrees. Requiring both BWE and BWMS for oceangoing vessels entering the Great Lakes was not proposed in the NPRM and therefore beyond the scope of this rulemaking.

One commenter stated that the allowance of BWE under the phase-one standard is inconsistent with the goal of minimizing NIS introductions and should be eliminated as an option. The Coast Guard agrees that BWE should be eliminated as an option as soon as possible. The primary purpose of NANPCA, as amended by NISA, is to ''prevent the unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements.'' 16 U.S.C. 4701(b). Permitting BWE to remain as a permissible management technique in light of other, more protective methods, would frustrate this clearly articulated statutory purpose and lead to an absurd result. *See Griffin* v. *Oceanic Contractors, Inc.,* 458 U.S. 564, 575, 102 S.Ct. 3245 (1982) (statutory interpretations ''which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.'') The Coast Guard is thus phasing out BWE as a BWM method in favor of more protective methods to best prevent the introduction and spread of NIS into waters of the U.S. consistent with this statutory purpose.

We also believe that existing vessels should be given a reasonable period of time to come into compliance with the phase-one standard, and that BWE should continue as a viable BWM alternative for a vessel until the phase-one standard applies to that vessel. However, we note that once a vessel is required to comply with the phase-one standard, BWE will no longer be an acceptable routine management method.

One commenter noted the U.S. Administration's goal of expanding coastwise or short-sea shipping, and requested that BWE be added as a management option for these vessels. The Coast Guard notes that its existing regulations do not require coastwise vessels to conduct BWE unless their voyage takes them more than 200 nautical miles from any shore. For the final rule, we have revised 33 CFR 151.2015 to exempt certain vessels from the BWM requirements and 33 CFR 151.2025 to provide additional BWM options besides installing BWMS. These changes are discussed above under the heading ''Applicability.''

One commenter suggested retaining BWE for all vessels when practicable, requiring a combination of best available technology and BWE to improve BWMS performance, and requiring BWE as a minimal treatment in case the BWMS fails. Another suggested the addition of rules requiring BWE 50 nautical miles outside the continental baseline for vessels conducting coastal voyages, implementation of a BWE verification system, and allowance of BWE within 200 nautical miles when a safety exemption would otherwise allow un-exchanged water to be discharged at a State port. The Coast Guard disagrees, and believes that phasing out BWE in favor of the BWM requirements in this final rule will be at least as effective as BWE to prevent the introduction of NIS into the waters of the United States. The Coast Guard notes that under 33 CFR 151.2040(b), the COTP may allow the vessel to conduct BWE as a management option if the BWMS fails to operate or the vessel's BWM method is unexpectedly unavailable.

Preamble Text

One commenter disagreed with the statement in the NPRM that ''The effectiveness of BWE is highly variable, largely depending on the specific vessel and voyage'' (74 FR 44663). The commenter added that the Great Lakes Seaway Ballast Water Working Group's strict enforcement of BWE requirements in the St. Lawrence Seaway is the main reason that there have been no reports of the establishment of invasive species on the Great Lakes since 2006.

The Coast Guard acknowledges the bi-national success in achieving high rates of regulatory compliance with existing BWE requirements. However, we do not have evidence that this successful enforcement necessarily proves the effectiveness of BWE, as there are also other regulations and requirements

being enforced for vessels entering the St. Lawrence Seaway.

Enforcement

Seventeen submitters commented on how the Coast Guard intends to enforce the BWDS.

Three commenters said there should be significant financial penalties to provide incentives for industry to meet implementation deadlines. The Coast Guard notes that the existing civil and criminal penalties for 33 CFR part 151 subparts C and D are established by statute and were not changed in the NPRM. They may now be found at 33 CFR 151.2080 of the final rule. After publication of the NPRM, in a separate action, the Coast Guard made an adjustment to the civil penalty tables found at 33 CFR 27.3. (75 FR 36273, 36278 (June 25, 2010)).

Five commenters stated that the numeric discharge standard would impose significant problems for compliance enforcement, particularly when results need to be legally acceptable, because sufficient techniques or equipment are not currently available to test ballast water on the spot. The Coast Guard disagrees, and believes that setting a practicable, numeric BWDS such as this final rule's BWDS, combined with type approval of BWMS, will facilitate compliance enforcement.

Another commenter said that a phase-two standard 1,000 times more stringent than the phase-one standard will be virtually impossible to enforce, and will significantly increase enforcement costs, and possibly increase downtime for inspected vessels. The Coast Guard agrees that implementation of the phase-two standard at this time could be impracticable for several reasons, including enforcement, as suggested by the commenter.

Two commenters requested that a rigorous enforcement, inspection, and monitoring program be developed to determine compliance, similar to that currently being performed by the bi-national Great Lakes Seaway Ballast Water Working Group for all vessels entering the St. Lawrence Seaway. Three commenters requested routine or random testing of the contents of a vessel's ballast tanks and ballast water discharge. One commenter said this testing would be especially important for oceangoing vessels that would discharge treated ballast water into freshwater. Two commenters suggested testing for total residual oxidants in ballast water as a way to determine the completion of chemical treatment, and installing onboard sensors in vessels' ballast tanks to measure chemical levels.

Four commenters asked about port state control requirements. One commenter requested that a limit of once in any calendar year must be imposed on the number of times that a vessel can be tested to determine whether its BWMS is working properly, and that onboard sensor data or the captain's signed and sworn certification transmitted to the port state authority should be sufficient. Another commenter said that vessel-based BWMS would not enable the port state authority to monitor ballast water. Two commenters stated that proper and effective sampling and test protocols, as well as required facilities and proficiency, still need to be established. One commenter requested specific information indicating how the BWDS will be enforced after implementation.

The Coast Guard believes that the approval process for BWMS, found in 46 CFR part 162.060 of this final rule, will provide a strong basis from which enforcement actions can proceed based on review of the records required to be kept on the vessel. These reviews will occur during port and flag state control exams. We acknowledge that compliance exam procedures for BWMS will be an important component of enforcement, and such procedures are under development. As discussed in the Summary of Changes section above, we have added a provision requiring sampling ports in order to facilitate enforcement of the BWDS.

Reporting and Recordkeeping

One commenter requested that the Ballast Water Reporting Form and reporting and recordkeeping requirements be revised to accommodate all of the proposed BWM methods in advance of the phase-one standard taking effect. The Coast Guard agrees, and will propose revisions to the Ballast Water Reporting Form and instructions either through a separate rulemaking project or in conjunction with the next scheduled renewal of the collection by OMB.

One commenter said the NBIC should be given regular dates for reporting information that they obtain from submitted reports. The Coast Guard notes that the NBIC already provides database information to the public through its Web site. As more vessels use electronic reporting, the NBIC is reducing delays in updating that Web site.

3. BWMS

General

Two commenters addressed the safety exception in 33 CFR 151.2045. The first commenter recommended that ''vessel design limitations'' should not be considered an ''extraordinary condition'' under which a master or person in charge of a vessel would be exempt from the requirement to use a BWM practice, including BWE, under certain circumstances. The second commenter supported the inclusion of the exception and interpreted it as allowing the discharge of ballast water that fails to meet the BWDS under emergency circumstances.

The Coast Guard believes that they may have misunderstood this provision. Under NISA, masters or persons in charge of vessels are not required to conduct BWE if the practice would be unsafe due to weather or vessel design. 16 U.S.C. 4701(k)(1). We have included this provision in the regulation, and it is an allowable exception to BWE only as long as a vessel is allowed to use BWE. Additionally, we have removed proposed 33 CFR 151.2045 Safety exceptions, as we determined that it was largely repetitive to what was proposed in 33 CFR 151.2040 Discharge of ballast water in extraordinary circumstances. We moved the one non-repetitive provision to § 151.2040. As a result, § 151.2040 now includes the provision noting that nothing in the regulations relieves the master, owner, agent, or person in charge of the vessel from any responsibility, including the safety and stability of the vessel and the safety of the crew and passengers.

Once a vessel is required to meet the BWDS, the general safety provision in § 151.2040 no longer applies. If the master or person in charge of the vessel determines that operation of the BWMS would endanger the vessel for some reason, the master or person in charge must inform the COTP, prior to the vessel's arrival, that BWM has not been conducted due to safety reasons. The COTP will evaluate the situation and direct the vessel accordingly.

One commenter considered the BWMS design and construction requirements to be onerous and likely to result in systems being overly complicated and expensive. The commenter called for the Coast Guard to approve the use of very simple approaches, such as manually pouring additives into tanks. The Coast Guard disagrees, and believes that all BWMS must be carefully designed, constructed, and approved to protect the vessel, the crew and passengers, and the environment. With respect to the example, treatment of ballast water using chemicals designed to kill organisms has the potential to adversely affect the safety of the vessel, the crew and passengers, and the environment if

the chemicals and the manner of their use are not carefully evaluated in advance and controlled and managed during use of the system.

Seven commenters stated that there were serious constraints on the feasibility of installing BWMS that require electrical service on tank barges and tank ships. Several commenters cited Coast Guard regulations for electrical equipment as an impediment to such installation (46 CFR 111.105–31(1)). Likewise, six vessel owners asserted that safety and regulatory requirements prohibit the installation on tank barges of BWMS that use electricity.

The Coast Guard agrees that electrical requirements included in 46 CFR subpart 162.060 may make installation of BWMS more complicated on certain vessels. However, if these requirements make it impossible for a vessel owner to safely install a BWMS, they should qualify for an extension of the compliance date, per 33 CFR 151.1513 or 151.2036. An extension would provide additional time to determine how BWMS can be safely installed. An extension would postpone installation costs for affected vessels. Data is unavailable on the number of vessels that would require extensions. We have not estimated the quantitative impacts of extensions.

One commenter proposed that the Coast Guard should require best available technology and BWE as an interim measure if compliant BWMS are not available by the implementation dates. The Coast Guard disagrees that best available technology and BWE together should be considered the de facto acceptable method of compliance. The Coast Guard considers establishing a practicable and protective BWDS to be the best approach for preventing the introduction of NIS by the wide array of vessels that must discharge ballast water for safe operation.

The Coast Guard believes that BWMS meeting the phase-one BWDS will generally be available in time for vessel owners and operators to comply with the implementation schedule in this final rule. For those cases where this is not so, we have provided a provision in the regulation that allows a master, owner, operator, agent, or person in charge of a vessel to apply for an extension of the compliance date.

One commenter asserted that BWE is sufficiently protective in preventing introductions of invasive species. This commenter also suggested that BWE should be an acceptable method of BWM if a vessel can demonstrate through sampling and analysis that BWE can meet the BWDS. Two commenters asserted that BWE is sufficiently protective in preventing invasive species introductions to the Great Lakes. These commenters further suggested that BWE should be an acceptable method of BWM for vessels entering the Great Lakes.

The Coast Guard disagrees that BWE is sufficiently protective against introductions of invasive species. Vessels are not always able to conduct BWE. While BWE has undoubtedly reduced the risk of introductions compared to no BWM at all, the inherent variability in the efficacy of BWE among vessels and even within vessels argues for the consistent application of more effective BWM practices. Additionally, as vessels on coastwise voyages are not required to conduct BWE under Coast Guard regulations, a BWMS is also necessary to ensure the prevention of the spread, and not just the introduction, of NIS.

One commenter questioned whether BWMS will effectively remove all contaminants in ballast water and asserted that onboard treatment will not be a viable option until that is the case. The commenter suggested that, as an alternative, vessels could use multiple systems to address all contaminants. The Coast Guard appreciates the commenter's concerns, but disagrees that a BWMS required under this rule will have to remove all potential contaminants in ballast water. NANPCA, as amended by NISA, requires the Coast Guard to ensure, to the maximum extent practicable, introductions of NIS are not discharged into the waters of the United States from vessels, and does not pertain to vessel discharges outside of that threat. The statute also requires that certain methods of BWM used instead of BWE must be environmentally sound. By requiring such systems to meet applicable EPA requirements related to treatment chemicals and their disinfection by-products prior to discharge, the Coast Guard will help ensure that treatment of ballast water does not result in adverse environmental consequences. The issue of non-organism contaminants in ballast water is also addressed under the EPA VGP. By requiring BWMS to meet all applicable EPA requirements prior to type approval, the Coast Guard will help ensure that treatment of ballast water does not create adverse consequences.

One commenter questioned whether onboard treatment is the best approach, given that IMO approval of BWMS is proceeding slowly. The Coast Guard disagrees that the pace of BWMS type approval under the IMO BWM Convention is proceeding slowly. In fact, we note that foreign type-approved systems are available.

One commenter questioned whether onboard systems were the best approach for preventing the discharge of organisms and noted that, unless a vessel is fitted with a backup system, the failure of the onboard treatment system could result in the discharge of untreated ballast. The Coast Guard notes that the rule has been revised to clarify that vessel owners and operators have a range of options for BWM, including use of BWMS, retention onboard, discharge to a shoreside treatment facility, or use of a U.S. PWS meeting Safe Drinking Water Act standards. We also note that the regulation requires BWMS to signal an alert if there is a failure and for vessel owners to report failures of the BWMS to the COTP at their place of destination. In such a situation, the COTP may require the vessel to perform alternative BWM practices before allowing the discharge of the ballast water.

Active Substances or Chemicals

One commenter asserted that many currently available BWMS use chemicals, and that these BWMS may result in contamination of ballasted fish holds. The commenter further stated that the proposed regulation must include exemptions for this circumstance. The Coast Guard agrees that chemical contamination of ballasted fish holds may be a problem with the use of a chemically-based BWMS. However, the Coast Guard is aware of several systems that do not use chemicals, and believes that owners and operators of fishing vessels will have sufficient options for meeting the BWDS (e.g., ultraviolet/filtration). For those fishing vessels that cannot install a BWMS onboard, we have provided a provision in the regulation that allows a master, owner, operator, agent, or person in charge of a vessel to apply for an extension of the compliance date if they can document that, despite all efforts to meet the BWDS requirements, compliance by that deadline is not possible.

Three commenters called for clarification as to how the regulations proposed in the NPRM would prevent the discharge of harmful active substances resulting from the use of BWMS. The Coast Guard agrees that the use of chemicals such as biocides to treat ballast water creates the potential for unwanted discharges of such chemicals. All systems using chemicals must be registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as applicable, prior to consideration by the Coast

Guard for type approval. Discharges from vessels with systems using non-pesticide chemicals (or pesticides that are generated solely by the use of a device onboard the same vessel as the ballast water to be treated) will be covered under the EPA VGP, which contains requirements to meet discharge limits established by EPA for residuals and by-products of chemicals used in ballast water treatment. All chemicals used in BWMS requiring FIFRA registration will be registered with EPA prior to applying for Coast Guard type-approval of the BWMS. One commenter encouraged the Coast Guard to allow treatment of ballast water with biocides to address specific species on specific routes within the Great Lakes as an alternative method of compliance. The Coast Guard appreciates this commenter's input, but disagrees with the proposed approach. The identification, with appropriate specificity, of the location and identity of every infestation within the Great Lakes is not feasible, nor is the identification of the appropriate biocide for each specific species. The Coast Guard has determined that the most protective approach is to require the uniform treatment of ballast water to reduce concentrations of all organisms prior to discharge.

Alternatives to BWMS

Thirteen commenters disagreed with the requirement for all applicable vessels to install BWMS, and called for the Coast Guard to allow vessels the flexibility to use other approaches, such as discharging to receiving vessels or to shoreside facilities. The Coast Guard agrees. As discussed previously regarding the comments dealing with applicability, we have revised our regulation to clarify that only vessels discharging ballast water into waters of the United States are required to comply with the BWDS requirements at 33 CFR 151.1510 and 151.2025 of this final rule. However, the dependence of the vessel on the availability of appropriate reception facilities must be identified in the vessel's BWM plan, along with the alternative management practices that will be used if and when discharge to a reception facility is not possible. Further, the lack of availability of adequate reception facilities is not an acceptable reason for discharge of ballast water that does not meet the BWDS into the waters of the United States, and such a discharge will constitute a violation of this regulation.

One commenter stated that vessels should be required to discharge to a shore-side treatment facility prior to entering the Great Lakes. The Coast Guard disagrees that vessels should be required to discharge to a shore-side facility. The Coast Guard believes it is important that vessels have the flexibility to select the BWM practice that makes the most sense for their specific circumstances. If vessel owners and operators want to have the option of discharging to shore and sufficient market exists for such an option, then it is likely that such facilities will be created.

One commenter stated that it may not be technically or economically feasible for a vessel owner to retrofit existing vessels with an approved BWMS, and recommended that the Coast Guard allow other BWM options under such circumstances. As described in 33 CFR 151.2025 and 151.2026, ballast water management practices other than use of a Coast Guard-approved BWMS will be allowed.

Additionally, vessels will have the options of discharging to a shoreside treatment facility or receiving vessel, if available, or retaining ballast water onboard. The Coast Guard will evaluate claims that BWMS and other allowed BWM practices are not available for specific vessels and potentially extend the compliance date for those vessels.

Foreign Type Approvals

Eleven commenters discussed the Coast Guard's proposed provision for the acceptance of foreign type approvals of BWMS. Four of the commenters supported the Coast Guard's proposal that such acceptance should be granted only when the foreign procedures are equivalent to those of the Coast Guard. Conversely, six of the commenters stated that the Coast Guard should accept foreign type-approvals without verifying equivalency of testing protocols.

The Coast Guard's approval process is intended to provide a level of assurance that a BWMS is likely to work consistently, effectively (i.e., meet the BWDS), and safely under shipboard conditions. Testing conducted with insufficient rigor or under substantially less challenging conditions will not provide that assurance. The Coast Guard retains the prerogative to verify the equivalency of foreign type-approval procedures before accepting such approvals.

One commenter stated that since the phase-one BWDS is equivalent to the IMO discharge standard, the Coast Guard must consider the protocol in the G8 guidelines to be sufficiently strict. The Coast Guard disagrees, and will assess each foreign administration's type-approval procedures, including test protocols and quality assurance practices, to determine whether the performance assessment conducted by the foreign administration is equivalent to that of the Coast Guard and complies with applicable U.S. domestic laws. We will evaluate, in accordance with the standards in the revised 46 CFR 162.060, the data and supporting information in approval applications submitted by manufacturers whose BWMS have received foreign type approval. We will not grant U.S. type approval to BWMS approved by foreign administrations based on approval procedures that are substantively less rigorous than the U.S. approval testing without additional testing as necessary and appropriate for the specific circumstance.

The Coast Guard recognizes some time will elapse between the publication of this final rule and the availability of U.S. approved BWMS. The Coast Guard believes that ballast water discharged into waters of the United States should undergo some type of treatment designed to reduce the risk of ballast water spreading NIS at the earliest possible date, particularly for those vessels currently unable to conduct BWE, as we believe this will provide greater reduction in the risk of NIS being introduced or spread via ballast water. Therefore, we have added a provision to the final rule to allow for a temporary acceptance of a foreign administration's approval if it can be shown that the foreign-approved BWMS is at least as effective as BWE. This temporary acceptance will be granted for 5 years from the date when the vessel on which the BWMS is installed is required to comply with the BWDS.

Two commenters requested that the rule include more details about the procedures the Coast Guard will follow to make determinations regarding the acceptance of foreign type approvals. The Coast Guard agrees and has made changes to 46 CFR 162.060–12, which are discussed in the Summary of Changes section above. The Coast Guard expects to examine each foreign administration's type-approval report, which should include the testing protocols used and the testing results, and then make a determination as to whether the procedures and criteria used were essentially equivalent in rigor and challenge to those of the Coast Guard. Additionally, in order to grant U.S. type approval or the temporary acceptance (as an AMS), the Coast Guard must comply with NEPA and other applicable environmental laws.

One of the commenters suggested that the Coast Guard use an advisory panel of independent scientists and agency representatives to conduct the

equivalency determinations for foreign administration's type-approval programs. The Coast Guard will make use of appropriate expertise in reviewing proposals for acceptance of foreign type approvals, including, when necessary, consultation with other agencies and outside experts.

One commenter referenced the text in the NPRM preamble that states: ''Under today's proposal, foreign vessels equipped with and operating a BWMS that has been approved by a foreign administration would be allowed to use the BWMS for discharging ballast water into U.S. waters if the Coast Guard determines that the foreign administration's approval process is equivalent to the Coast Guard's approval process, the BWMS otherwise meets the requirements of this proposed rule, and the resulting discharge into waters of the U.S. meets the applicable (i.e., phase-one or phase-two) proposed discharge standard.'' The commenter suggested that this text be changed to replace ''foreign vessel'' with ''vessel,'' so that U.S.-flagged ships which currently have installed BWMS that have been type approved by a foreign administration under the specified conditions would be acceptable.

The Coast Guard has clarified the procedures in 46 CFR 162.060–12 which allow manufacturers of foreign type-approved BWMS to submit data developed during the foreign type-approval testing to support the submission of an application pursuant to 46 CFR 162.060–14. The Coast Guard will evaluate the application and determine if U.S. type approval will be granted. If U.S. type approval is granted, the BWMS can be installed and used on U.S. and foreign flagged vessels.

Availability of BWMS

One commenter stated that it is unlikely that any systems have documented test results to demonstrate compliance with a standard that is 100 or 1,000 times stricter than phase-one. The Coast Guard agrees that no sufficiently credible documentation exists of BWMS able to meet concentrations 100 or 1,000 times more stringent than the proposed phase-one standard. The Coast Guard notes that the EPA SAB came to the same conclusion in its recent report (EPA SAB 2011).

Two commenters stated that BWMS that can meet the Coast Guard's proposed BWDS are available now. The Coast Guard agrees that technologies capable of meeting the phase-one BWDS will be available for installation on applicable vessels on the required implementation schedule. We do not, however, agree that there is a currently available BWMS that has been shown to meet the phase-two BWDS.

In response to the Coast Guard's question, ''Are there technology systems that can be scalable or modified to meet multiple stringency standards after being installed?'' one commenter stated that technology is available, pending adjustments, for ''Lakers,'' vessels operating solely on the Great Lakes. The Coast Guard notes that our question specifically asked for quantitative information on technologies, necessary modifications, costs, and sources of such information. The comment did not include quantitative information. Therefore, we are unable to validate this claim.

One State government agency stated that the availability of technology that meets the phase-two standard is demonstrated by the findings of the CSLC report on BWM technologies. This report concluded that at least seven commercially available BWMS had demonstrated the capability to comply with California's performance standards.

The Coast Guard disagrees. In the CSLC 2010 report on the availability of technology to meet California requirements, the State Lands Commission acknowledged the limitations of testing data and clarified that the Commission's analysis determines whether or not systems have demonstrated the potential to comply with California's standards. (CSLC Sept 2010). The ''potential to comply'' determination was based on whether the reported efficacy data for the systems examined indicated that at least one test (averaged across replicates) met California's standards for every testable organism size class during either land-based or shipboard testing.

It is important to recognize that California's phase 2 discharge standard for organisms greater than 50 micrometers (one millionth of a meter, μm) is ''no detectable living organisms,'' and is not defined by a specific volumetric concentration (i.e., California's phase 2 discharge standard is not equivalent to a concentration 1,000 times smaller than the IMO standard, or to any other standard expressed as a concentration). In its report, the Commission concluded ''Thus, California's standard for this organism size class is not directly comparable to the IMO or standards proposed by other entities evaluated by these reports.''

Because of the difficulties of testing treatment technologies to meet standards more stringent than the IMO's, the Commission convened its Ballast Water Treatment Technology Technical Advisory Panel, which recommended that the best option for California was to maintain the ''no detectable organisms'' standard for larger organisms, and develop and adopt compliance verification protocols. At this point, it is not known what those protocols, or their detection limits, will be, but is instructive that the EPA SAB concluded that ''* * * current test methods and detection limits preclude a complete statistical assessment of whether a BWMS meets any standard more stringent than Phase 1.''

One commenter questioned whether a BWMS will be available to allow the industry to meet the BWM requirements on the schedule proposed in the NPRM. As discussed elsewhere in this preamble, the Coast Guard has made changes to the applicability in order to address this very question. We have also delayed the initial compliance date for new vessels by 2 years to provide time for the U.S. type-approval process to be implemented. It is our belief that there will be suitable BWMS on the market for those vessels required to comply with the BWDS in this final rule. The companies bringing BWMS to the market include many with international supply and service networks. Further, existing information indicates that not all BWMS will need to be installed in drydock or even while the vessel is out of service. However, to address the situation where, through no fault of their own, a vessel owner cannot install a BWMS on time, we have also included a provision allowing the Coast Guard to extend that particular vessel's compliance date.

One commenter stated that treatment technology is not available for barges with large ballast water capacity. The Coast Guard neither agrees nor disagrees with this comment. We recognize that some vessels will present challenges due to the specific nature of their design and operations. We have made adjustments to this final rule's applicability and implementation timeline to allow the Coast Guard to deal with these challenges either on a one-on-one basis (as with a request for an extension of compliance) or up front en masse (as with the removal of certain vessels from the BWDS applicability).

One commenter stated that the design of some vessels is not appropriate for current approaches to BWM and proposed that technical feasibility be taken into account. The commenter specifically referenced the lack of electrical power and personnel available to operate BWMS onboard unmanned, unpowered barges. The Coast Guard agrees that technical feasibility is an

important consideration, and has included it as one of many factors that must be considered during the Coast Guard's practicability review. Two commenters asserted that the installation of BWMS on their vessels would not be economically feasible, but did not provide any additional data. Given the issues raised by these and other commenters, the Coast Guard has revised the applicability of the BWDS rule. The Coast Guard is publishing this final rule to apply the phase-one BWDS only to the following vessels discharging ballast water into water of the United States: vessels entering waters of the United States from outside the EEZ, and those seagoing vessels that operate in more than one COTP Zone and are greater than 1,600 GRT (3,000 GT (ITC)). The Coast Guard has determined that additional analysis is needed before expanding the applicability in this final rule.

Additionally, the Coast Guard has decided the BWM requirements will not include vessels that operate solely in inland waters. The Coast Guard fully intends to expand the BWDS rule to all vessels, as noted in the final rule preamble section V.A. Summary of Changes from the NPRM, but has determined that additional analysis is necessary to support this expansion. We also intend to conduct additional research as necessary.

Eight commenters stated that they were unaware of any available BWMS designed for vessels operating exclusively in freshwater. The Coast Guard disagrees, as there are several BWMS currently on the market or advancing through approval procedures in other countries that are based on treatment processes that function independently of salinity, such as filtration and ultraviolet radiation (UV). Many BWMS using active substances, particularly electrolytic chlorination, can work effectively in freshwater if provided an appropriate source of ions such as seawater or brine held in a tank. While it still remains for these systems to be approved by the Coast Guard, the fact that they are being approved by other countries in accordance with the standards set forth in the IMO BWM Convention for use in meeting a standard equivalent to the phase-one standard indicates there are likely to be BWMS that will be effective when used on vessels that operate exclusively in freshwater.

One commenter stated that BWMS are available that are capable of treating small volumes and flow rates and would fit in vessels with low space availability. The Coast Guard notes this information.

Funding Issues

One commenter stated that it is incumbent on the Coast Guard and Canadian agencies to cooperatively assist companies to design and market BWMS that may need to be unique to the Great Lakes. The Coast Guard disagrees that the government of the United States, either alone or in cooperation with Canada, must assist companies to design and market BWMS beyond encouraging such actions through the establishment a BWDS.

Two commenters asserted that provision of adequate funding is necessary to facilitate the development of technology for treating ballast water and for implementation of the proposed regulation. The availability of funding for either development of technology or implementation of this final rule is outside the scope of this rule.

Four commenters stated that this regulation should include provisions for BWMS testing and application fees to support testing and review processes within Federal agencies and ILs. One submitter commented that there is a need for increased research and development funding for testing and development of BWM technologies. The Coast Guard disagrees that the rule should specify fees for testing and application review. Costs of testing will be determined by the ILs.

Specific BWMS Requirements

One commenter stated that the requirement for the BWMS to retain records of operation for 24 months is excessive and will result in significant additional costs. The commenter proposed instead that the period of record retention in the BWMS be reduced to 6 months, and that data older than that be acceptable if retained on disks. The Coast Guard agrees this would be more efficient and has clarified requirements for record retention to allow for electronic data collection in lieu of a hard copy by revising 46 CFR 162.060–20(b)(5) and (b)(6), and added 33 CFR 151.2070(d).

One commenter stated the Coast Guard should not automatically decertify a formerly approved BWMS when the manufacturer goes out of business or ceases to support a type-approved system. The Coast Guard agrees with the commenter that the issue of concern should be whether or not the BWMS is capable of being operated properly and effectively. The provision for de-certification is included to allow the Coast Guard to suspend approval of BWMS that cannot be properly maintained as a consequence of business decisions by the manufacturer.

One commenter stated the use of an operational, type-approved BWMS should be sufficient for compliance, and that vessel masters should not be held to discharge standards that they cannot themselves measure or understand without specialized scientific or engineering training. The Coast Guard disagrees with the commenter. The intent of NANPCA, as amended by NISA, is to prevent the introduction and spread of unwanted organisms in vessels' ballast water. For this reason, the Coast Guard has proposed a BWDS that we believe is practicable to implement. Type approval alone cannot ensure that vessel discharges meet the BWDS; it can only increase the probability that systems used to meet the BWDS will be effective. It is the vessel owner or operator's responsibility to meet the discharge requirement.

One commenter stated that failure to use an approved BWMS as required should be a violation, even when another allowable practice is used. The Coast Guard believes that the regulations as drafted in the final rule clarify as to whether a violation has in fact occurred would depend on the particular circumstances. Vessels with an inoperable BWMS will be required to inform the appropriate COTP prior to arrival. The COTP will evaluate the circumstances and inform the vessel of required alternatives, as well any finding of a violation that would result in an enforcement action.

Independent Laboratories (IL)

Three commenters questioned whether sufficient numbers of ILs will exist that can perform the required testing of BWMS for type approval. The Coast Guard acknowledges the key role that ILs will play in the type-approval process. The Coast Guard is aware of several organizations in the United States and abroad that have stated their intention to serve as ILs and that have taken steps to create the infrastructure and organizational capacities to perform the functions. The Coast Guard will not know definitively whether enough organizations capable of conducting the test procedures exist until such time as organizations apply for designation by the Coast Guard and are determined to meet the requirements for ILs testing BWMS. The Coast Guard will move quickly to announce its availability to accept applications for designation.

Five commenters discussed the importance of having a sufficient availability of qualified ILs for effective and timely implementation of the proposed rule. The Coast Guard agrees

that, as with other installed vessel equipment, ILs will play a critical role in ensuring that marketed technologies are highly likely to meet the regulatory requirements for which they are intended. It is our belief that the publication of this final rule, as well as our stated intent to follow up with a subsequent rule implementing a more stringent standard after additional analysis and research, will provide incentive for the creation of additional ILs.

Two commenters stated that the Coast Guard should audit ILs to ensure the integrity of the testing process. The Coast Guard agrees; audits are a standard component of the Coast Guard's oversight of ILs (46 CFR subpart 159.010).

Four commenters discussed ILs in reference to existing test facilities. Three advised that existing facilities that conduct tests of BWMS, particularly the Great Ships Initiative (GSI), should be utilized as ILs. One commenter advised the Coast Guard to work closely with established programs and other appropriate experts to develop testing procedures. The Coast Guard is aware of most, if not all, existing test facilities in the United States and internationally, including GSI, and would welcome IL applications from any qualified organization once the procedures for certification of ILs are implemented. The Coast Guard has worked with most of the existing test facilities in the United States in the development of standard test procedures for BWMS under the EPA ETV Protocol and will continue to do so.

One commenter stated that the timeframe for designation of ILs should be specified. The Coast Guard disagrees that specification of the time frame for designation of ILs should be part of the regulation. There are too many unknowns prior to receiving the applications to be able to set a deadline. Additionally, there should be no limit on a facility's opportunity to apply to become an IL after the initial round of applications and approvals are completed.

Three commenters requested, respectively, that academic institutions, classification societies, and agencies of foreign governments be eligible for consideration as ILs. The Coast Guard agrees with the commenters. We consider the existing specifications for ILs in 46 CFR 162.060–3 and 162.060–40 to be inclusive of the types of organizations identified by these commenters.

Three commenters called for the Coast Guard to approve a specific list of entities that could be accepted as ILs. The Coast Guard disagrees with the recommendation. Listing specific entities in the regulation could serve as a disincentive to other entities who could also meet all of the requirements to become an IL. The Coast Guard will make publicly available a list of accepted ILs on the Coast Guard Maritime Information Exchange (CGMIX) Web site, *http://cgmix.uscg.mil/.*

Three commenters recommended that the Coast Guard include provisions for adequate funding for its Federal activities and the activities of the ILs in this regulation. Two of the commenters specifically suggested setting fees for application review and testing. The Coast Guard clarifies that type-approval applicants must handle all IL testing costs through individual contracts for services with ILs. The Coast Guard currently does not have express authority to charge fees for implementing these BWM requirements.

Two commenters urged the Coast Guard to presumptively accept certified IL test results without conducting substantial additional reviews, in the interest of streamlining the type-approval process and avoiding unnecessary delays in making approved systems available. The Coast Guard agrees that delays should be minimized. The point of designation and regular oversight of ILs via audits is to avoid the need for time-consuming reviews of individual test reports. However, the Coast Guard must assess each individual test report for the BWMS being tested, and make an independent determination of the BWMS. This obligation cannot be delegated to the ILs. Additionally, the Coast Guard's type-approval determination is a Federal agency action that must be analyzed under NEPA and other applicable U.S. environmental laws.

Two commenters specifically supported the Coast Guard's proposed use of ILs to conduct testing associated with type-approval determinations.

One commenter recommended that a manufacturer or vendor should be allowed to use multiple ILs as necessary and efficient during the different phases of approval testing. The Coast Guard agrees that a BWMS vendor may use the services of more than one entity to most effectively conduct the required tests, and there are provisions in this final rule that allow for this. However, in the interest of organizational and administrative efficiency, the Coast Guard requires that one IL coordinates and oversees all testing and reporting for each type-approval application.

Changes to Specific Sections

Two commenters stated that all uses of ''should'' in 33 CFR 151.2050 need to be changed to ''must'' to reflect the fact that the previously voluntary provisions are now requirements. The Coast Guard agrees. We have revised 33 CFR 151.2050 accordingly.

One commenter requested that the definition of ''major conversion'' be consistent with the definition of the term in the IMO BWM Convention. The Coast Guard disagrees; we did not propose any changes to the ''major conversion'' definition in the NPRM, and do not believe any change is necessary at this time.

One commenter recommended changing the text in 33 CFR 151.2005(b) to revise the definition of ''empty/refill exchange'' to replace the word ''should'' with the word ''must.'' The Coast Guard agrees that the wording needs to reflect the mandatory nature of the requirement, thus we have revised the text accordingly.

One commenter called for the Coast Guard to revise the text of 33 CFR 151.2040(a) to read that a vessel retains ''all of its ballast water,'' instead of ''its ballast water,'' as currently written. The Coast Guard disagrees that the change is necessary, as the existing text is already inclusive.

Two commenters requested that the text in 33 CFR 151.2040 and 151.2045 clearly state that the responsibility to meet the legal requirements of the regulation still applies to vessels that claim extraordinary circumstances or invoke the safety exemption. The commenters presumed that while the infraction would exist, fines or penalties would be mitigated to reflect the circumstances. The Coast Guard agrees with the commenters' presumption. Vessels unable to meet the BWM requirements will be required to inform the COTP prior to arrival. The COTP will evaluate the circumstances and direct the vessel accordingly, which may include the imposition of fines or penalties.

One commenter recommended that the introductory paragraphs of the appendix to subpart D of 33 CFR part 151—Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form introductory paragraph be revised to change the word ''should'' to the word ''must.'' The Coast Guard does not believe this change is necessary, as the legal requirement to submit amendments is clearly laid out in 33 CFR 151.2060(c). Additionally, as discussed earlier in this preamble, we are removing the Ballast Water Reporting Form from the CFR (*see* V.A.

Summary of Changes from the NPRM). We will keep the comment in mind, however, and reevaluate it when we update the OMB approved collection as part of our next regularly scheduled renewal package.

One commenter recommended revising 46 CFR 162.060–32 by changing ''appropriate dosages'' to ''appropriate dosages over all applicable temperatures'' to reflect the fact that chemical and biological processes are temperature dependent. The Coast Guard agrees and has included the clarifying language in the final rule text.

One commenter stated that because some types of treatment processes, such as UV, may act to make organisms unviable or unable to reproduce rather than killing them outright, the Coast Guard should include viability as a criterion for determination of BWMS efficacy. The Coast Guard disagrees. This issue has been the point of much discussion both in the United States and internationally in association with the IMO BWM Convention. The Coast Guard has decided to use live/dead rather than viable/unviable, because the latter designations would require culturing potentially large numbers of different kinds of organisms to determine whether they were capable of reproduction. This would be made even more problematic by the fact that scientists are not able to culture many of the organisms in question. Finally, it is more conservative, and thus more protective, to base efficacy decision on the basis of live/dead, rather than viable/unviable.

One commenter stated, in reference to 46 CFR 162.060–20(b)(5), that a BWMS should not have to record all by-passes of the BWMS. Rather, the commenter thought that such recording should be allowable either through electronic or hand entry in the logbook. The Coast Guard agrees and has revised the provision accordingly.

One commenter stated that a strong, environmentally protective, concentration-based, numerical, national BWDS is a critical and necessary component of the nation's invasive species program. The Coast Guard agrees.

One commenter requested a definition of the term ''Test Plan'' as it is used in the approval text in 46 CFR 162.060–10(d). The Test Plan is a document that describes the procedures for conducting a test or study according to protocol requirements for a specific BWMS at a particular test site. At a minimum, the Test Plan includes detailed instructions for test procedures, sample and data collection, sample handling and preservation, precision, accuracy, goals, quality assurance, and quality control procedures relevant to the particular site. We have not included a definition of Test Plan, but we have detailed the necessary requirements in 46 CFR 162.060–24. These details were included in the NPRM, as well.

One commenter asked the Coast Guard to clarify the definition of ''change in design'' in 46 CFR 162.060–16(a), and recommended following the same approach we used in defining ''major conversion'' as applied to a vessel. Another commenter stated the Coast Guard should better define what is meant by a ''design change'' in 46 CFR 162.060–16.

The Coast Guard disagrees that additional explanation is necessary. The language is the same as for other pollution prevention equipment subject to Coast Guard-approval. With the language as it is written, any change in the design of an approved BWMS must be submitted to the Coast Guard for review.

One commenter stated that the wording in 46 CFR 162.060–20(h) is too inflexible, and that the paragraph's goals could be achieved through assessments of individual systems. The Coast Guard disagrees. The requirements in 46 CFR 162.060–20(h) are important for the safe and effective operation of BWMS. If a developer considers that the requirements may be best met through other than ''equipped with a means to * * *'', then the developer may discuss alternatives with the Coast Guard.

Responses to Questions Posed in NPRM

One commenter stated, in response to the NPRM preamble question on costs, that it is not possible to estimate costs for BWMS capable of meeting higher stringency standards because such systems do not exist. The Coast Guard is currently undertaking additional studies to estimate the costs of BWMS capable of meeting more stringent standards.

One commenter stated, in response to another NPRM preamble question, that it is not feasible to assess whether BWMS are sufficiently scalable to be able to meet multiple stringency standards until methods and facilities capable of testing to the more stringent standards are available. The Coast Guard agrees that more exacting methods and improved facilities are needed to test to the more stringent standards.

One commenter responded to a specific question on industry readiness to implement the phase-two standard by stating that ILs and vendors are ready to implement the phase-two standard in 2014 (in place of phase-one). The Coast Guard disagrees with this comment. To date, there are no ILs (as defined in this rule), nor to the knowledge of the Coast Guard are there test facilities or vendors that have demonstrated their readiness to implement the phase-two standard in 2014. We again note the conclusion of the EPA SAB that test methods are not available to determine whether a BWMS meets any standard more stringent than the IMO's.

4. Approval Protocols

General

Two commenters said that they would accept a greater chance of type two statistical errors in determining whether BWMS were working effectively. The Coast Guard disagrees. A type two statistical error is when one accepts a null hypothesis (a hypothesis that is false) as true. In the case of approving BWMS, this would mean increasing the probability of approving a BWMS when it does not actually meet the BWDS.

Five submitters commented on the make-up of test organisms in challenge water, and on the use of cultured organisms. Two commenters recommended that specific concentrations of organisms be required in challenge conditions. One advocated requiring challenge water to have 100 times the threshold concentrations in the BWDS (for example, 1,000 organisms larger than 50 micrometers per m^3 for phase one and 1 organism larger than 50 micrometers per m^3 for the phase-two standard). The other commenter stated that the Coast Guard should establish minimum test conditions of 50,000 organisms larger than 50 micrometers per m^3 of water for all trials, with at least three trials having more than 100,000 organisms per m^3 of water; 1,000 organisms per m^3 of water for organisms between 10 and 50 micrometers in all replicate trials, with at least three trials having more than 2,000 organisms per m^3 of water; 10,000 colony forming units (cfu) of heterotrophic bacteria per mL of water; total suspended solids of 25 mg per L; dissolved organic carbon of 5 mg per L, and particulate organic carbon of 5 mg per L.

The Coast Guard disagrees and will not make these specific changes. The Coast Guard based the approval challenge conditions on those in the ETV Protocol, which is the product of a consensus process based on input from numerous experts from a wide range of scientific and engineering disciplines. As such, the ETV Protocol constitutes the best available validated procedure for evaluating BWMS. The issues raised by the commenters were

considered in the development of the ETV Protocol.

Two commenters called for publication of the testing protocols and procedures used by ILs prior to implementation of the phase-one standard in order to ensure transparency. The Coast Guard agrees with this comment. This final rule, as well as the NPRM before it, describes, in detail, the procedures and protocols for use by ILs in testing BWMS for purposes of type approval (*see* 46 CFR part 162.060).

One commenter stated the Coast Guard should review and revise the protocols for assessing biological and operational performance and environmental soundness of systems annually. The commenter further stated the reviews should be based on findings from type approvals, compliance tests, and independent research, and that these findings should be made publicly available in a database maintained by the Coast Guard and the EPA.

The Coast Guard agrees that the protocols should be reviewed regularly and that the performance data for BWMS should be publicly available, consistent with applicable privileges covering commercially sensitive information.

The Coast Guard disagrees that review and revision should occur annually and that performance data should necessarily be made available through a database. Under NISA, the Coast Guard must assess and as appropriate revise our ballast water regulations at least every 3 years. It remains to be seen what the most efficient and practicable method will be for making performance data available to the public. As the U.S. approval process evolves, we will evaluate the most efficient means for making information available to the public, as well as the appropriate time frame for conducting reviews.

Two commenters stated that the Coast Guard should base the approval testing and certification procedures on those laid out in the G8 guidelines and Procedure for Approval of Ballast Water Management Systems that make use of Active Substances (G9) (G9 procedure), which were developed to assist implementation of the IMO BWM Convention. The Coast Guard agrees with these commenters to a certain extent. The Coast Guard attempted to harmonize our type-approval procedures with these references to the extent practicable, and the proposed type-approval procedures do not conflict with those under the IMO BWM Convention. However, the G8 guidelines in particular are very unspecific on important details, subject to interpretation by individual administrations, and do not wholly reflect advances in ballast water science and technology that have occurred since the adoption of the G8 guidelines in 2005. The G9 procedure addresses the acceptability of chemicals used to treat ballast water. The closest parallel to the G9 procedure in the United States is the registration of biocides under FIFRA, which is administered by the EPA, not the Coast Guard.

Three submitters addressed the need for the Coast Guard's approval application review process to be completed in a timely fashion. Two of these three called for the Coast Guard to specify, in the regulations, the timeframes for review and approval of BWMS. The Coast Guard disagrees that the timeframe for review and decision should be specified in the regulation. A number of the components of the approval process, including environmental reviews and reviews to be completed by other Federal agencies, are inherently not amenable to pre-set timeframes. The Coast Guard appreciates the importance of minimizing the time required for review of applications, and will make efforts to do so.

EPA ETV Protocol

Six commenters urged the Coast Guard to release a final version of the EPA ETV Protocol for verification of BWMS. We agree that the final ETV Protocol is a key component to this rule and, as discussed previously, we have incorporated it by reference into our final rule at 46 CFR 162.060–5. We note that EPA released the ETV protocol in September 2010, and that it is available on the ETV web page (*http://www.epa.gov/nrmrl/std/etv/vp.html#wqpc*).

Two commenters urged the Coast Guard to use the EPA ETV Protocol as the basis for the approval tests to assess performance of BWMS in meeting the BWDS. Conversely, one commenter did not support the use of the revised ETV Protocol as the basis of the approval test procedures. The Coast Guard has adopted the ETV Protocol. The ETV Protocol is the product of a consensus process based on input from numerous experts from a wide range of scientific and engineering disciplines. As such, the ETV Protocol constitutes the best available validated procedure for evaluating BWMS.

The Coast Guard will work with EPA and other stakeholders to update the ETV Protocol as necessary and appropriate in the future. If future updates are made, we would update our rules and policies as necessary to reflect the ETV Protocol to be used in the U.S. approval process.

Two commenters called for the Coast Guard to define protocols and methods for approval testing that are clear and practicable. One commenter requested that Coast Guard do this prior to the implementation of the approval process. In this final rule, the Coast Guard has established procedures to be followed for shipboard testing as well as adopting the ETV Protocol. We believe these regulations are clear, but also anticipate issuing guidance to help manufacturers and vendors work their way through the U.S. approval process.

One commenter considered the proposed requirements for type approval to be thorough and well done. The Coast Guard notes their submission and endorsement of the protocols.

Land-Based Testing

One commenter stated that the land-based test protocols should include a requirement that the concentration of organisms in the discharge from control tanks be at least ten times the discharge limit set by the BWDS.

One commenter recommended the Coast Guard should consider requiring three short-term tests (18–24 hrs) and five 3–5 day tests at each of the required test facilities to enhance certainty that treatment systems will be effective over a range of voyage durations.

One commenter stated that required holding times for land-based tests should be 5 days, but that longer or shorter periods should be added as warranted by specific BWMS.

The Coast Guard disagrees and will not make these specific changes. The Coast Guard based the approval requirements for land-based testing on those in the ETV Protocol, which is the product of a consensus process based on input from numerous experts from a wide range of scientific and engineering disciplines. As such, the ETV Protocol constitutes the best available validated procedure for evaluating BWMS. The issues raised were considered in the development of the ETV Protocol.

One commenter stated that test tanks should be the unit of replication and that inline integrated samples of at least 5 m^3 for organisms larger than 50 micrometers, 5 L for both organisms 10–50 micrometers and bacteria, and indicator microbes should be collected for analysis. The Coast Guard disagrees that test tanks should be the unit of replication. Requiring multiple operations of the BWMS provides a useful test of the system's ability to work consistently. The Coast Guard also disagrees that the recommended minimum volumes for sample sizes

should be established in the regulation. The ETV Protocol addresses how to determine the necessary sample volumes for a test.

One commenter disagreed with the proposed requirements for testing in-tank (batch) treatments, and specifically proposed that a maximum of 10 m^3 of water would be sufficient. The Coast Guard disagrees. The requirement for a minimum of 200 m^3 of water reflects the importance of testing BWMS at a scale relevant to their intended use. Testing a BWMS intended for use on vessels using hundreds, if not tens of thousands, of cubic meters of ballast water by only using the BWMS to treat a few cubic meters would not adequately allow a determination of whether the system would work effectively to provide the necessary dose to the entire volume requiring treatment.

Three commenters discussed the difficulties of making determinations of live/dead status of organisms as part of approval testing, particularly for organisms in the 10–50 micrometers size range. The Coast Guard acknowledges the identified difficulties. The Coast Guard points out that the ETV Protocol, incorporated by reference in this final rule, on which the approval testing requirements are based, includes a multi-stain process because of these difficulties.

One commenter stated that methods for testing to the phase-two standard are not necessary, and that ''interim enforcement standards'' such as the use of a system approved as achieving some measurable concentration, would suffice.

As discussed in this preamble, this final rule only contains requirements for the phase-one standard (*see* V.A. Summary of Changes from the NPRM). We will consider all of the comments that we received on the phase-two standard as we draft a notice or other rulemaking document that addresses the phase-two standard.

Two commenters stated that simultaneous filling of treatment and control tanks during land-based testing should be required to assure comparability between the two, saying that sequential fills could result in different compositions and concentrations. The Coast Guard disagrees with the recommendation. Either simultaneous or sequential filling is allowed. The purpose of the control tanks is not to compare directly with treatment tanks, but to control for unexplained sources of mortality. One may accomplish this through comparisons of relative change rather than specific changes in abundance and composition.

One commenter stated that the Coast Guard should require five consecutive successful trials during land-based testing. The commenter specified that such successes must demonstrate below-threshold concentrations of living organisms, acceptable discharge toxicity, and absence of mechanical failures. The commenter added that more than two failures of any kind during testing should result in the Coast Guard requiring the BWMS to be removed from the test facility for refinement.

The Coast Guard notes that the NPRM did require five consecutive successful trials, a requirement that is retained in this final rule. The issue of when to cease testing on the basis of failures is a contractual issue between the manufacturer and the IL. It is important to note that the Coast Guard type-approval procedures require the results of all testing, including failures, be included in the Test Report.

One commenter stated that land-based test protocols should be updated regularly, and that approval results should be correlated with subsequent performance on vessels (as revealed by compliance assessments). The Coast Guard agrees with the commenter. Testing protocols used for type approval will be reviewed regularly, based on information developed by ILs, researchers, and the Coast Guard during enforcement actions. However, the Coast Guard has no plans to establish a specific review period or process within this rule.

Shipboard Testing

One commenter stated that BWMS should demonstrate that they are capable of meeting the discharge standard under a range of ballast flow rates, as a vessel would experience during cargo operations. The Coast Guard agrees. Shipboard testing is included as part of the approval requirements, and was included in the NPRM, to evaluate system efficacy under a range of operating conditions, including variable flow rates.

One commenter asked how long the ballast water must be held onboard vessels during shipboard testing. The Coast Guard has revised the shipboard testing protocol to clearly state that hold times are to be at least for the minimum time necessary to achieve full treatment and an acceptable discharge water quality, and for the time necessary for the vessel to conduct its normal BWM procedures from uptake to discharge. The Coast Guard has not required vessels conducting approval tests to hold treated water for specific periods of time.

One commenter stated that the Coast Guard should rely entirely on shipboard testing for BWMS type approval rather than requiring land-based testing. The Coast Guard disagrees. Land-based tests provide an important degree of control that is not possible under shipboard conditions. A comprehensive test regime that integrates land-based and shipboard testing provides the best evidence that a BWMS will likely perform satisfactorily once it is installed on a wide range of ships and operated under a wide range of challenging conditions.

Eleven commenters stated the proposed duration for shipboard testing (12 months, ten test cycles, or both) would be onerous and unnecessary. Three of the commenters specifically recommended the Coast Guard use the 6 month requirement of the G8 guidelines. The Coast Guard agrees with these comments and has revised the regulation accordingly.

Six commenters stated that the shipboard testing requirement of three geographic regions is too difficult to achieve on many vessels. Two commenters further recommended the Coast Guard follow the IMO or Shipboard Technology Evaluation Program (STEP) approaches for shipboard testing. The Coast Guard agrees and the shipboard testing protocols have been revised accordingly.

One commenter recommended that shipboard testing procedures incorporate sampling and analysis procedures similar to those used for land-based testing, to the degree possible and appropriate. The Coast Guard agrees with the general point. The shipboard testing procedures have been developed to make use of the same procedures as land-based to the degree appropriate.

One commenter recommended the Coast Guard allow systems to be tested on multiple vessels. The Coast Guard neither prohibits nor requires testing on multiple vessels.

Two commenters stated that shipboard testing should focus on operational performance parameters, rather than repeating the experimental testing performed on land. The Coast Guard notes that the shipboard testing requirements include assessing operational parameters as well as testing system efficacy in meeting the BWDS, but do not require the same level of experimental control as for the land-based testing.

Two submitters commented generally on the inclusion of a requirement for

shipboard testing. One considered the requirement to be unnecessary, given land-based testing is also required, while the other considered the requirement for shipboard testing to be completely appropriate. The Coast Guard agrees with the commenter who supported the inclusion of shipboard testing. Shipboard tests are intended to assess system performance under operational conditions, over a period of extended use. As such, shipboard tests are not repetitions of land-based tests and are necessary for effective approval evaluation.

One commenter recommended that safety and operational reliability aspects of approval testing should be dropped. The commenter believed that vessel owners and their consultants are capable of assessing these issues on their own. The Coast Guard disagrees; assessment of the suitability of equipment for shipboard circumstances is a fundamental aspect of the approval process.

Phase-Two Testing

Seven commenters involved in developing or testing BWM technologies stated that no methods appropriate for measuring BWMS' capability to meet the phase-two standard are currently available. The Coast Guard agrees that more developed methods and improved facilities are needed to more effectively test to the more stringent standards. This is one of the reasons we have deferred issuance of a more stringent phase-two standard.

One State commenter asserted that initial data from technology developers indicate that laboratories can test BWMS' ability to meet the phase-two standard. The Coast Guard disagrees with this interpretation of the available data. The Coast Guard has not seen quantitative validation that any laboratories can currently measure the ability of BWMS to meet the phase-two standard.

Salinity Classes

One commenter stated that BWMS should be tested for type approval in at least two of three salinity classes, but that the proposed 10 practical salinity unit (PSU) difference between salinity classes should not be required. Two commenters stated that the Coast Guard should require land-based testing of BWMS at three locations with different salinities.

The Coast Guard agrees that BWMS should be approved for the salinity regimes in which they will be used, and we have written the approval procedures to allow the manufacturer or vendor to determine in which salinity class(es) they will test their BWMS. The U.S. type approval will only apply to the salinity class for which the BWMS passed testing. This will allow some manufacturers to forego the cost of testing in freshwater, for example, if they do not expect to find a market in that salinity class.

Six submitters commented on the requirements for BWMS approved for freshwater use, and stated that such systems should be required to undergo testing in a land-based facility with natural freshwater challenge water. One of these commenters also stated that BWMS approved for use in the Great Lakes should be tested in the Great Lakes.

The Coast Guard agrees that systems type approved for use in freshwater should be tested in freshwater, and has clarified the requirements accordingly. The Coast Guard disagrees that we should require such freshwater BWMS testing in the Great Lakes. In many cases, BWMS treating ballast water that will be discharged in the Great Lakes will be doing so with water taken on outside the Great Lakes.

Sampling

One commenter stated that approaches for statistically-sound sampling to identify with confidence when a BWMS can meet phase-one limits in land-based and shipboard testing still require some refinement. The commenter identified number and volume of samples as two specific areas of concern. The Coast Guard agrees, and has incorporated additional requirements on sampling design in the testing protocol.

One commenter requested a different definition of ''representativeness'' in 46 CFR 162.060–3. The Coast Guard agrees that this definition needed refining, and we have replaced it with the term ''representative sample,'' which has a new definition. With respect to samples obtained in testing, a representative sample is a random sample in which every individual of interest in the larger population (organisms, molecules, etc.) has an unbiased chance of appearing in the sample.

Test Organisms

One commenter stated the Coast Guard should identify a list of microbes and appropriate microbial concentrations in challenge water for use in BWMS approval tests and then authorize vendors to add these organisms into the vessels' ballast water during shipboard tests. The Coast Guard disagrees. The use of added organisms in shipboard tests could, besides being extremely complicated and difficult, result in the risk of NIS introductions.

One commenter asked why the Coast Guard does not provide a list of specific test microbes for use in testing the efficacy of BWMS. The Coast Guard notes that, while standard test organisms are widely used in drinking and wastewater regulations, several constraints prevent them from being deemed appropriate for testing BWMS. First, there is no agreed list of organisms that would adequately represent all of the different kinds of organisms found in ballast water. Secondly, even for those organisms that have been identified as potential candidates for such use, there are concerns about difficulties associated with culturing the numbers needed for full-scale testing. Another concern is the potential for release of such organisms into the environment, given that the specific organisms would not be native in many places where testing would occur.

One commenter recommended that the Coast Guard develop a list of the conditions necessary for each BWMS to kill or inactivate the most resistant organisms representative of ballast water composition. The commenter cited work by NSF International, Old Dominion University, and University of Washington that identifies several candidate organisms for such use. The Coast Guard is aware of the cited work, which was conducted in support of the joint Coast Guard and EPA ETV Protocol efforts to identify appropriate standard test organisms for land-based BWMS tests. The Coast Guard disagrees that these organisms should be used as part of shipboard testing. We do not believe that using these organisms as part of shipboard testing would be practicable to develop a comprehensive understanding of the conditions necessary for each BWMS to kill or remove organisms.

Acceptance of Already-Tested BWMS

Two commenters proposed, as a way to avoid delays in the availability of approved BWMS, that the Coast Guard grant type approval to BWMS that have undergone prior testing by a variety of U.S. government-sponsored research programs or by independent researchers. The Coast Guard partly agrees. The Coast Guard shares the commenters' concerns about avoiding delays. We have included a provision under which U.S. type approval can be based on testing performed under protocols other than those specified in this final rule, provided that the testing determined to be equivalent to the U.S. type approval procedures. If BWMS developers have conducted substantive

testing prior to the availability of ILs, the developers can request a review and determination of equivalency by the Coast Guard. This review will be conducted in the same fashion as the assessment of foreign approval programs.

Two commenters stated that the Coast Guard should accept any testing protocol or procedure established or accepted by a number of different U.S. and foreign entities as equivalent to the proposed approval testing. The Coast Guard disagrees. The Coast Guard will evaluate the degree to which other testing protocols are equivalent to those implemented under this rule on a case-by-case basis, and will make decisions about equivalencies accordingly.

One commenter asserted that the Coast Guard should not require retesting of previously approved BWMS when new test methods are established. The Coast Guard agrees that retesting should not be automatically required of all BWMS approved under previous testing requirements. However, the Coast Guard will retain the right to require retesting of specific BWMS if subsequent information indicates the previously approved systems may not, in fact, effectively reduce the concentrations of organisms in vessels' ballast water.

One commenter stated that vessels enrolled in STEP should be grandfathered and not subjected to further equivalency evaluations under the approval process, since a BWMS accepted into STEP has been vigorously reviewed by the Coast Guard and will continue to be evaluated through the period of STEP participation. The commenter offered the opinion that requiring companies that have gone through the STEP process to meet additional requirements will constitute a punishment for acting proactively.

The Coast Guard agrees that vessels accepted into STEP should not be subjected to additional requirements associated with the use of type approved BWMS. However, the Coast Guard clarifies that STEP applies to vessels, not to BWMS. Thus, a vessel with a specific BWMS accepted into STEP is allowed to use that system as long as the vessel remains in good standing within STEP, regardless of whether the BWMS is granted type approval. Under this provision, it is use of the BWMS that constitutes meeting BWM requirements, not meeting the BWDS. The Coast Guard considers a vessel in STEP to be in Good Standing if the vessel has met reporting requirements, has or is engaged in testing the system in accordance with the accepted test plan, and is using the BWMS to treat all ballast water discharged to waters of the U.S.

One commenter proposed that information submitted for acceptance into STEP should be considered to meet the requirements for an approval application, saying that an applicant for type approval should be able to simply reference information previously submitted in a STEP application. The Coast Guard disagrees. Applicants for approval may submit copies of materials previously submitted for acceptance to STEP, providing that the approval application adequately references the pertinent sections of the STEP application materials. To do this, the applicant must include copies of any referenced STEP materials in the approval application. The applicant is responsible for submitting a complete approval application to the specified Coast Guard office.

One commenter proposed that a safety certification by any recognized ship classification society or flag state member of IMO should be considered conclusive proof that the so-certified BWMS is safe for use in vessels at sea. The Coast Guard disagrees. The Coast Guard has proposed a provision for acceptance of type approvals by foreign administrations, and will evaluate the procedures and criteria used in such approvals prior to accepting them as equivalent to Coast Guard requirements. Importantly, biocides may also require registration by the EPA under FIFRA and other statutes and must meet discharge limits established under EPA's Vessel General Permit.

Environmental Analyses of BWMS

Four commenters expressed concern that Coast Guard NEPA and ESA evaluations and EPA FIFRA evaluations will significantly delay the approval process, and hence the rate at which type-approved technologies can be brought to the market. The commenters made specific recommendations to minimize delays, including taking a programmatic approach to NEPA assessments for approval decisions, starting NEPA assessments at the time a developer first approaches the Coast Guard, maintaining a publicly available database of releasable NEPA assessment information that can be used in subsequent assessments, and integrating Coast Guard and EPA data and analysis requirements that stem from different programs.

The Coast Guard agrees that the analyses identified by the commenters could take a significant amount of time to complete. The Coast Guard already makes use of existing NEPA documentation to the degree appropriate when conducting the required assessments. We also conduct programmatic assessments, when appropriate, to avoid redundancies. The Coast Guard and EPA will seek to integrate or harmonize the analysis conducted under their separate statutory requirements to the maximum extent practicable. The Coast Guard and EPA are coordinating closely to identify opportunities to avoid or limit redundancies in our respective programs.

One commenter, a Federal agency, recommended that the Coast Guard explicitly state that national-level environmental analyses, including U.S. Fish and Wildlife and National Marine Fisheries Service review and response times, will most likely take months or years. The Coast Guard agrees that these reviews could take a significant amount of time, but we are working closely with our Federal agency partners to streamline these review and approval processes.

Miscellaneous Comments on the Approval Process

Two BWMS developers stated that the Coast Guard must clarify that type approval will apply to a specific BWMS, not to a specific manufacturer, and further stated that it should be the approval holder's responsibility to ensure that BWMS production units meet quality control specifications. The Coast Guard agrees that type approval applies to a specific BWMS rather than manufacturers, and reviewed the regulatory text to ensure it was clear on this point. We did not see a need to make any changes to the regulation in order to clarify this. The Coast Guard disagrees that type approval should not include examination of BWMS production unit manufacturers. The Coast Guard's approval procedures for other marine equipment include examinations of a manufacturers' ability to fabricate production units that conform to the design and specifications of the type-approved unit. This will be a fundamental component of the Coast Guard's BWMS approval process.

One commenter stated that classification societies, such as the American Bureau of Shipping or Bureau Veritas, should be able to review changes to approved BWMS and determine whether or not re-certification is necessary. The Coast Guard disagrees. Under the existing process for type approvals, all changes to the design or construction of type-approved equipment must be submitted to the Coast Guard for review.

One commenter recommended that documentation submitted for type

approval in accordance with the IMO BWM Convention should be accepted as meeting the requirements for Test Reports in 46 CFR 162.060–34(b)–(f). The Coast Guard agrees that documents prepared in accordance with approval requirements under the IMO BWM Convention may be used in an application for type approval under the Coast Guard's regulation. However, these documents must demonstrate that the tested BWMS meets the BWDS and that the test protocols used are equivalent to the U.S. approval process. Such documents must be included in the approval application package and all references to data or other information in the documents submitted for IMO approval must refer to specific sections and pages.

One commenter asserted that the proposed approval procedures will guarantee a government-created, shortage of available technology. The Coast Guard disagrees with this perspective. By type approving treatment technologies in accordance with rigorous and credible test procedures and requirements, the Coast Guard will create a class of treatment options in which vessel owners and operators can have a high degree of confidence. Without sufficient testing requirements, vessel owners and operators would have no means beyond vendors' claims of assessing whether a BWMS on the market is likely to be effective or not.

One commenter requested that the Coast Guard clarify whether BWMS undergoing type approval will need to demonstrate efficacy in meeting both the phase-one and phase-two standards. The Coast Guard clarifies that type approval under the final rule will focus on assessing the efficacy of the BWMS in meeting the phase one standard. The data generated from these tests may or may not provide information on the ability of the BWMS to meet more stringent standards.

One commenter recommended that the Coast Guard require that BWMS approval testing involve full-production units with full installation, operation, and maintenance manuals, and be operated by test facility staff or the vessel crew during tests to ensure that generally installed systems have a high probability of working effectively. The Coast Guard agrees. The approval requirements have been revised to clarify that tests must be conducted on production units installed in the manner intended for normal shipboard operation and that systems must be operated by ILs during land-based testing and vessel crews during shipboard testing.

One commenter stated that the approval procedures should incorporate BWMS type approval for a rated capacity range, similar to that contained in the G8 guidelines. The Coast Guard agrees with the recommendation, and has revised the approval procedure accordingly.

One commenter disagreed with the Coast Guard's proposal in 46 CFR 162.060–18 that type approval could be suspended or withdrawn if the BWMS is no longer manufactured or supported by the manufacturer. The commenter stated their belief that this would be unreasonably punitive to shipowners, and that properly maintained and operating systems should be acceptable regardless of the manufacturer's status.

The Coast Guard takes this opportunity to clarify that a type-approved system no longer manufactured or supported by the manufacturer would not automatically lose its type approval. However, use of parts or materials not specified for the originally type-approved system may trigger a design change review under 46 CFR 162.060–16.

One commenter stated that the proposed requirements for testing and approving BWMS were excessively complex, expensive, unnecessary for the purpose of proving effectiveness or vessel safety, and likely to delay installation of certified equipment. The Coast Guard disagrees. The general process of land-based and shipboard testing for approval of BWMS has been widely discussed and accepted internationally. The Coast Guard has reconsidered alternatives to specific sections of the approval process and the determinations and resolutions of these considerations are described in this preamble in section V.B. Discussion of Comments.

One commenter called for IL Test Reports submitted in association with a request for approval of a BWMS to be made electronically available to the public immediately after they are submitted to the Coast Guard. The Coast Guard disagrees that test data should be made publicly available immediately upon application, as such data may include confidential business information and other privileged information, which is not subject to public release under the Freedom of Information Act (5 U.S.C. 522). Test Reports, or appropriate portions thereof, will be made public as part of the approval procedure when the Coast Guard announces a proposed decision on an application.

5. Legal

Preemption of State Action

Twelve commenters directly requested that the Coast Guard preempt all State ballast water treatment standards and requirements in favor of a uniform, national, water quality-based treatment standard. One commenter argued that numerous States are already unconstitutionally burdening interstate commerce with conflicting State BWM regulations. The commenter noted that interstate shipping will quickly become impossible if the Coast Guard fails to preempt all State treatment regulations and likened the patchwork of State regulations to a ''destructive economic balkanization.'' Another commenter agreed with this sentiment, stating that without preemption, BWM regulations on a State-by-State basis create the potential to restrict trade and severely impact the economies of ''nearly every State which relies on waterborne commerce.''

Another of the commenters requesting Federal preemption of BWM regulation noted that different rules for different States or regions within the United States will create confusion and delays in the primary objective of eliminating aquatic NIS invasions. Two of the commenters quoted a resolution passed by the Great Lakes Commission in May of 2007 which urged a Federal ballast water treatment regime that would preempt States. One commenter called the idea of preemption by the Coast Guard ''a very positive step.''

One of the commenters requesting Federal preemption noted that Federal standardization of the methodology and technological requirements of BWM is integral to the future success of any ballast water treatment regime. Another commenter argued that the varying State standards have already created a patchwork of requirements that are economically inefficient, highly cumbersome to implement, and unproven in regards to prevention of aquatic NIS invasions.

Three commenters approved of and agreed with our determination to not preempt State BWM standards. One of these commenters noted that the Federal regulations should set a minimum compliance standard applicable to all waters of the United States but allow the States to enact stronger water quality standards applicable to their own waters. Another noted that States only began implementing their own standards after what they called ''decades of delay and inaction at the Federal level.''

One commenter agreed that lack of Federal action in regard to

implementing a BWDS caused States to step in and begin regulating. This commenter, however, also urged for Federal preemption of even those already implemented State standards.

One commenter urged the Coast Guard to seek passage of a single Federal law which would preempt all State and any other Federal laws. Another commenter urged the Coast Guard to advocate to Congress the need to preempt States' BWM laws and to coordinate U.S. standards with international standards.

As we noted in the NPRM and again in section VII.E. Federalism of this preamble, NANPCA, as amended by NISA, contains a ''savings provision'' that saves to the States their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any States over species of fish and wildlife.'' 16 U.S.C. 4725. In light of this provision, the Coast Guard cannot legally preempt State action to regulate discharges of ballast water within State waters.

One commenter noted the statutory restriction, but urged the Coast Guard to work with States to harmonize BWDS, noting that regulatory consistency between State, Federal, and international requirements is a critical component to moving forward in the field of BWM. Two other commenters also urged the Coast Guard to work with individual States, but argued for Federal preemption as well.

The Coast Guard agrees that we must work with the States, as our statutory authority clearly envisions a Federal/State partnership. We have been in frequent contact with representatives from all of the States which have already implemented their own BWDS. We will continue to work with these contacts in an attempt to harmonize BWDS as much as we can.

Unified Federal Action

Two commenters urged the Administration to assert that these regulations supersede any action by the EPA or by States under any provision of the Clean Water Act. Another questioned whether these regulations would be consistent with the existing EPA VGP, and sought clarification. This commenter noted that the Coast Guard and EPA must be in accord in regards to the proper standard to apply to the treatment of ballast water. One commenter requested that the preamble to the NPRM be revised to include a discussion of the EPA VGP, and also urged the Coast Guard to ''outline and cross-reference'' the regulations with the EPA VGP.

The Coast Guard agrees that, to the extent possible and appropriate, there should be consistency between Coast Guard and EPA ballast water requirements. We maintain a very close working relationship with EPA. We consulted with them on matters relating to the EPA VGP and we also sought their comments on both the NPRM and this final rule. NANPCA, as amended by NISA, and the Clean Water Act provide both the Coast Guard and EPA, respectively, with the authority to regulate discharge of ballast water from vessels. However, these statutes contain different language and we will continue to work with the EPA to ensure that, to the greatest extent possible, given our separate statutory authorities, each agency's actions are consistent and do not work at cross-purposes to the other agency's actions.

We note that the NPRM preamble did briefly discuss the EPA's 2008 VGP (74 FR 44634), including the address for an EPA Web site where the reader could find more information. As we move forward and implement today's final rule, we will work closely with EPA to try and provide a type of ''crosswalk'' guidance between Coast Guard regulations on ballast water discharge and EPA's VGP.

Thirty-one commenters supported establishing a uniform, protective, national standard for ballast water discharge from vessels calling at U.S. ports. Six commenters also said that it is vital that international shipping regulations, including those for ballast water, are standardized globally. However, both NANPCA, as amended by NISA, and the Clean Water Act allow for concurrent State regulatory action with regard to ballast water discharge.

Compliance With NISA

One commenter argued that the proposed phase-one BWDS would violate NISA, as it would not be at least as effective as BWE at preventing or reducing the introduction of NIS into waters of the United States. The commenter cited 16 U.S.C. 4711(c)(D)(iii). The Coast Guard disagrees. As we noted in both the NPRM and the DPEIS, the effectiveness of BWE varies widely, not only from vessel to vessel but also on individual vessels from voyage to voyage. Given the wide range of effectiveness of BWE moving from a scheme where you might get a poor BWE or none at all, if the vessel faced safety hazards, to one where all technologies would be tested and certified as meeting the BWDS, provides a level of protectiveness that is not only at least as effective as BWE, but in many cases much better than BWE.

Two commenters argued that legal precedent interpreting the phrase ''maximum extent practicable'' limits the proposed practicability review to considering one factor: Technological feasibility. These commenters cited several Federal court cases to bolster their argument. (*Biodiversity Legal Foundation* v. *Babbit,* 146 F.3d 1249 (10th Cir. 1998); *Fund for Animals* v. *Babbitt,* 903 F. Supp. 96, D.D.C. 1995); *Wyoming* v. *United States,* 279 F.3d 1214 (10th Cir. 2002)).

The Coast Guard disagrees with the commenters' interpretation of the cited cases. In each of these cases, the deciding court noted that the phrase ''to the maximum extent practicable'' certainly limits agency discretion. However, the United States Court of Appeals for the Tenth Circuit noted in the Biodiversity decision that the phrase itself is ''facially ambiguous.'' (*Biodiversity,* 146 F.3d 1249 at 1254.) In such a scenario, where the statutory mandate is ambiguous, courts must defer to an agency's interpretation so long as that interpretation is permissible. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984).

Interpreting ''maximum extent practicable'' to include factors other than technological feasibility is permissible. If Congress had wanted to limit the Coast Guard's review to technological feasibility alone, it certainly could have done so but did not.

''Practicable'' is defined as ''that which is performable, feasible, [or] possible.'' *Biodiversity* at 1254, citing Black's Law Dictionary 1172 (6th ed. 1991). In order to determine whether a proposed phase-two standard or any standard higher than phase-one is performable, feasible, and/or possible, it will be necessary to look at more than just technological feasibility. Whether a standard is practicable could also require, among other factors, a determination as to whether the technology is effective, can be implemented by vessels required to meet the BWDS, which necessarily includes a review of whether that technology can be produced in large enough quantities to be installed on those vessels, the probable duration of that installation period, whether vessel owners can afford to install the technologies, and, if they cannot, what the potential ramification on the national transportation system might be if vessel owners opt to go out of business instead.

Two commenters argued that the language from NANPCA directing regulation of vessels entering the Great

Lakes from outside of the EEZ (16 U.S.C. 4711(b)) does not allow for the proposed practicability review because this paragraph of NANPCA does not contain the same ''maximum extent practicable'' language later added by NISA for vessels entering waters of the United States in general. The Coast Guard disagrees. NISA was enacted to build upon the requirements of NANPCA; therefore it is proper to apply the practicability review to the Great Lakes as well.

One commenter requested that we revise the preamble to the NPRM to explicitly state that NISA establishes the objective of a zero-discharge standard. We agree that the objective of NISA is to prevent the introduction and spread of NIS in waters of the United States, with caveats for doing so to the maximum extent practicable. We believe this response is consistent with the Coast Guard's legal requirements and should satisfy the commenter's concern.

APA Concerns

One commenter argued that the NPRM violated the APA because while the IMO Treaty (presumably the commenter intended to reference the IMO BWM Convention) allows ratifying countries to impose more stringent treatment standards if they find it a necessity for public health or the environment, the NPRM made no such finding. The Coast Guard disagrees with this comment. First, the Coast Guard is implementing NISA and not the IMO BWM Convention. While the Coast Guard supports international efforts for the prevention and control of NIS from ships' ballast water, the Coast Guard is not under an obligation at this time to implement the IMO BWM Convention as the United States is not a Party to the IMO BWM Convention and there is no enacted domestic legislation implementing the IMO BWM Convention. Thus, the Coast Guard must comply with its mandate under NISA and applicable U.S. laws on issuing regulations, which we have done. Moreover, the BWM Convention has not entered into force at this time for any countries, even those that have ratified it. The Coast Guard also disagrees with the commenter's characterization of the IMO BWM Convention's provisions regarding Parties' implementation of more stringent measures than those contained in the IMO BWM Convention. The IMO BWM Convention clearly states that: ''Nothing in this Convention shall be interpreted as preventing a Party from taking * * * more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, consistent with international law''.

Three commenters argued that the regulation, particularly the practicability reviews, should include more detail in order to prevent legal challenges. The Coast Guard agrees that the regulations must not be overly vague in order to avoid a finding that they are arbitrary and capricious under the APA. We drafted the NPRM and have drafted this rule in a manner that is intended to eliminate vagueness. In regards to the practicability review, we have included more specific details of what the Coast Guard will consider; however, the regulation does allow for the consideration of additional criteria not listed. This is to ensure that the Coast Guard is not foreclosed from considering an issue that cannot be foreseen today.

Eight commenters argued that the NPRM violated the APA by not explaining the rationale for including vessels that are not currently required to conduct BWE in the requirement to comply with the BWDS in the NPRM. They argued that the NPRM is based on ''inaccurate assumptions'' and ''incomplete research'' and also that the DPEIS and NPRM RA lacked sufficient rationale to justify applying the NPRM's proposed requirements to vessels operating only on the Great Lakes or to barges and towing vessels operating in the U.S. domestic trade.

As we have noted in this preamble, we have revised the applicability of this rule such that most vessels operating in the waters of the United States without having entered waters of the United States from outside the EEZ will not be required to comply with the BWDS in this rule (*see* V.A. Summary of Changes from the NPRM). In the future, and after further analysis, we do intend to extend this applicability to vessels operating in waters of the United States, whether or not they ever operate outside of the EEZ. We also intend to conduct additional research on this issue as necessary. We will reconsider the commenters' arguments at that time and ensure that the public is allowed to comment on our information, rationale, and data before that extension is implemented.

Seven commenters argued that the inclusion of a phase-two standard violated the APA, as it was arbitrary and capricious ''on its face''. They cited the lack of any factual or scientific rationale for its inclusion, as well as the lack of any discussion relevant to the phase-two standard in either the NPRM RA or the DPEIS.

Four commenters stated that the phase-two standard was not properly promulgated for appropriate scrutiny within the regulatory process and also requested the necessary economic and environmental analyses for other alternatives as part of a separate rulemaking that would give stakeholders an opportunity to provide meaningful comments.

As noted in preamble section V.A. Summary of Changes from the NPRM, we are only moving forward with the phase-one BWDS at this time. We fully intend to issue regulations in the future that will include a more stringent standard, after completing additional research and analysis. Those future regulations will be supported by all legally required environmental and economic analyses, which will be made available to the public for comment as required by applicable laws related to Federal rulemaking. We will keep the commenters' concerns in mind as we draft those regulations and analyses.

Authority To Issue Regulations

Twenty-one commenters argued that the Coast Guard does not have the authority to require vessels to comply with a BWDS if those vessels do not enter the waters of the United States from outside the EEZ. These commenters all cited the provision in 16 U.S.C. 4711(c)(2)(D) which specifically allows the Coast Guard to direct a vessel to conduct a BWE or alternative BWM method if that vessel operated beyond the EEZ. They argued that this specific authority must be read to limit the broader grants of authority in 16 U.S.C. (c)(1), (c)(2)(A), (e), and (f).

The Coast Guard disagrees that we do not have the statutory authority under NISA to regulate ballast water on vessels that do not operate outside of the EEZ. NISA requires that the Coast Guard ''ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels * * *.'' 16 U.S.C. 4711(c)(2)(A). This mandate includes promulgating standards for vessels that do not operate outside of the EEZ, as 16 U.S.C. 4711(c)(2)(B) makes NISA applicable to ''all vessels equipped with ballast water tanks that operate in waters of the United States'' without regard to whether those vessels ever operate outside of the EEZ. This is supported by other language in NISA, which is clear that ''discharge,'' in this context, is not limited to the introduction of NIS into waters of the United States from waters outside of the EEZ but also covers the internal spread of NIS.

The Coast Guard disagrees with the commenters' reading of NISA, including their arguments that the statutory authority found in subparagraphs (c)(2)(A) and (c)(2)(B) of 16 U.S.C. 4711 are ''broad'' grants limited by ''specific'' grants of other subparagraphs of 16 U.S.C. 4711(c). The mandate included in 16 U.S.C. 4711(c)(2)(A) is also a ''specific'' requirement and cannot be deemed a nullity by the existence of 16 U.S.C. 4711(c)(2)(D). Subparagraph (D) of 16 U.S.C. 4711(c)(2) merely sets forth the initial ballast water requirements for a certain subset of vessels. Ultimately, the Coast Guard must read the statute as a whole and follow all of the paragraphs and subparagraphs of 16 U.S.C. 4711 when we promulgate our BWDS under NISA.

Two additional commenters noted that NISA requires the Coast Guard to take into account a variety of factors, including vessel types and differing operating conditions, when issuing regulations. The commenters cited 16 U.S.C. 4711(c)(2)(H). They argued that by proposing a ''one size fits all'' BWDS, the Coast Guard violated the authority to regulate provided within NISA.

The Coast Guard disagrees with the allegation that its BWDS violates NISA, but agrees that it must comply with 16 U.S.C. 4711(c)(2)(H), just as it must comply with the other subparagraphs in 16 U.S.C. 4711. A ''one size fits all'' BWDS would not take into proper consideration all of the elements of 16 U.S.C. 4711(c)(2)(H), including the possibility that BWMS may not currently be available for all vessel types in all operating conditions. As such, the NPRM included exceptions and alternatives to using a BWMS for extraordinary circumstances, such as heavy weather or BWMS failure, and those exceptions and alternatives are retained in the final rule. We have also revised 33 CFR 151.1510 and 151.2025 to include alternatives to using a BWMS.

Tribal Impacts

We received one comment that cited tribal concerns, however, the commenter did not raise any issues that would require consultation under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rather, the commenter noted that invasions of aquatic NIS into the waters of certain Great Lakes could cause substantial hardships to tribal commercial and subsistence fisheries, which might in turn require a reconsideration of a Federal court-ordered Consent Decree between several tribes, the Federal Government, and the State of Michigan.

We do not disagree with this assessment. We are issuing this rule in order to prevent NIS invasions, and the very hardships that the commenter relays.

Technical Issues

Two commenters questioned our use of the term ''U.S. waters'' in several sections, instead of the term ''waters of the United States,'' which we explicitly defined in the NPRM. We agree that the proper term should be ''waters of the United States'' and have revised 33 CFR 151.1512, 151.2005, 151.2025, and 151.2035 to use this term.

One commenter suggested that the definition for the term ''ballast water'' be revised to state explicitly that it does not include water sealed in ballast tanks, water permanently ballasted and changed only in connection with drydocking, and water taken into ballast tanks from commercial or municipal freshwater sources.

The Coast Guard agrees with the commenter and believes the final rule addresses the concern. The regulation, as written, already accomplishes the requested relief for the first two categories by allowing vessels subject to the requirements of 33 CFR subpart C to ''retain the ballast water onboard the vessel'' (33 CFR 151.1510(a)(2)). For vessels subject to the requirements of 33 CFR subpart D, we have clarified 33 CFR 151.2025(a) to require only those vessels discharging ballast water into the waters of the United States to employ one of the required ballast water management methods. The suggestions pertaining to ballast water purchased from commercial or municipal sources have also been incorporated into 33 CFR 151.1510(a)(4) and 151.2025(a)(2), by allowing for the use of water meeting Safe Drinking Water Act requirements as an alternative to requiring installation of a BWMS.

One commenter questioned whether revisions made to the proposed phase-two standard, after the practicability review from proposed 33 CFR 151.1511(c), would include an opportunity for public comment. While neither those revisions nor the phase-two standard are included in this final rule, we had always anticipated that any changes to an effective rulemaking would be subject to the notice and comment provisions of the APA unless the change fell within one of the narrow exemptions included within the APA. *See* 5 U.S.C. 553(b). Likewise, any changes made to this rule, including reinsertion of a phase-two standard, will need to comply with the APA.

One commenter argued that proposed 33 CFR 151.2045(b)(1) contained a cross reference to a section (33 CFR 151.1514) that does not exist. We believe the commenter was confused; 33 CFR 151.1514 does exist in the CFR, but we did not propose any amendments to that section, therefore it did not appear in the NPRM. We have not made any revisions in response to this comment.

One commenter argued that penalty provisions were too low. The penalty provisions included in proposed 33 CFR 151.2080 have been adjusted for inflation per the civil penalty adjustment table in 33 CFR 27.3. *See* 75 FR 36278 (June 25, 2010). Our statutory authority sets the maximum penalty that we may levy, with the allowance that penalties may be readjusted for inflation.

Two commenters urged that the Coast Guard assign accountability for BWDS compliance to the vessel owner of record, instead of to ''the owner, operator, agent, or person in charge,'' as we proposed. We disagree with this suggestion. Persons at every level of authority, whether owner, lessee, or operator, may be held responsible for the failure of a vessel to follow the BWM practices required by this regulation, including use of an approved BWMS.

One commenter agreed with our proposal to keep ballast water regulations for the Great Lakes separate from ballast water regulations for waters of the United States in general, citing the distinction also found in NISA. This final rule carries that distinction forward.

One commenter noted that we define the term ''build date'' in proposed 33 CFR 151.2005, but never use the term. Instead, proposed 33 CFR 151.2035 used the term ''vessel's construction date.'' The commenter recommended that we use the latter, and add a definition for it to replace the one for ''build date.'' Other commenters recommended that we use the same definition for ''build date'' as the IMO used for ''constructed'' in the IMO BWM Convention.

We agree that the term used in the regulation should be the same as that defined. We have revised 33 CFR 151.2005 to define the term ''constructed,'' and have revised the tables in 33 CFR 151.1512 and 151.2035 to use this term. We chose the term ''constructed,'' as suggested by the second commenter, because this is the term used in the IMO BWM Convention. Thus, we have also revised the actual definition for ''constructed'' to mirror the definition from the IMO BWM Convention. This change in terminology does not reflect a substantive change from the NPRM.

One commenter requested that we remove the word ''foreign'' from proposed 33 CFR 151.2020, which provides an exemption for vessels in ''innocent passage.'' They argued that it is possible, if rare, for a U.S. vessel to operate in waters of the United States on a route where it does not call on a U.S. port. The Coast Guard disagrees that the ''innocent passage'' exclusion should apply to U.S. vessels, as this concept concerns foreign-flagged vessels operating in a coastal state's territorial sea, and therefore has retained the ''foreign'' vessel distinction in 33 CFR 151.2020.

One commenter asked for an explanation of proposed 33 CFR 151.1505 and 151.2013 (Severability). These provisions are included in order to protect as much of the regulations as possible, in the event that their promulgation is subjected to a legal challenge. In short, they direct a reviewing court, upon a determination that portions of the regulations are invalid, to invalidate only those portions and leave the remaining provisions intact.

One commenter requested we add a reference to 33 CFR 151.2015 (Exemptions) in 33 CFR 151.2010 (Applicability). The Coast Guard agrees with this suggestion and has made the requested edit.

One commenter requested that we add a reference in 33 CFR 151.2015(b) (Exemptions) to the statutory exemption for crude oil tankers found at 16 U.S.C. 4711(c)(3)(L). The Coast Guard has not made this change; the authority citation for 33 CFR part 151 subpart D already lists 16 U.S.C. 4711, therefore, adding a specific citation into the regulatory section would be redundant.

One commenter requested that we amend the NPRM preamble to add a discussion of additional provisions of NANPCA and NISA exempting crude oil tankers in the coastwise trade from complying with BWM, specifically citing provisions regarding the statutorily required ''Crude oil Tanker Ballast Facility Study'' (16 U.S.C. 4711(k)(3)). The commenter also requested that a discussion of the referenced study be added to the preamble of the NPRM.

The Coast Guard has added the referenced report to the docket for this rule, as the commenter noted their inability to locate it. However, the Coast Guard disagrees with including a discussion of the study in the preamble to this final rule, as the report is not pertinent to the BWDS. To address the commenter's recommendation to remove the exemption for crude oil tankers in the coastwise trade from the regulation, the Coast Guard notes that NISA's statutory exemption precludes such action at this time (16 U.S.C. 4711(c)(3)(L)). The Coast Guard notes, however, that the statutory exemption for crude oil tankers engaged in Coastwise trade found in NISA is not found in the CWA; therefore, these vessels must comply with all CWA requirements.

One commenter requested that we include the specific zone demarcations in our definition of COTP. The Coast Guard has not made the requested change; the definition points to 33 CFR part 3, which already contains the specific delineations requested by the commenter.

One commenter questioned the exemption for warships, naval auxiliaries, or other government vessels found in proposed 33 CFR 151.2015(a) and requested more information as to why that exemption was added.

Our regulation is designed to be consistent with international law and practice, and international agreements relating to the protection and preservation of the marine environment routinely state expressly that they do not apply to any warship, naval auxiliary, or other vessels owned or operated by a nation and used, for the time being, only on government non-commercial service. However, this does not exonerate such vessels from implementing environmentally sound practices. Under such agreements, nations generally must ensure that such vessels act in a manner consistent, so far as reasonable and practicable, with the provisions of the agreements.

One commenter requested that we specifically note that the Snell and Eisenhower Locks fall within the definition of ''ports or places in the United States.'' Another commenter requested the addition of a definition of the phrase ''port or place of the United States.'' The Coast Guard has not made these changes; the current definitions for ''port or place of destination,'' ''United States,'' and ''waters of the United States,'' when read together, provide a definition for the phrase ''port or place of the United States,'' which would include the specified Locks. Adding a specific reference to only these two Locks into the regulation would inevitably lead to questions as to whether other Locks, waterways, or other places were also meant to be included in the regulation, adding unnecessary ambiguity.

One commenter pointed out that the headers in the tables in 33 CFR 151.1512 were improperly aligned with the information presented in the table. The Coast Guard has corrected this problem in this final rule.

One commenter requested we either add definitions for the following terms or change the terms used to clarify their meaning. The terms (and locations in the proposed regulation) were: ''discharge port'' (as used in 33 CFR 151.1516), ''crew'' (as used in 33 CFR 151.2050), and ''jurisdiction of the United States'' (as used in 33 CFR 151.2070).

The Coast Guard agrees, in part. These terms are used but not defined in the referenced sections; however, they are terms that have existed in regulation for many years. The Coast Guard has not received any indication that the use of these terms is confusing to the regulated industry or public in general. In light of this fact, we are not adding the requested definitions.

Other Legal Issues

One commenter requested consultation with the Prince William Sound Regional Citizens' Advisory Council (PWS RCAC), citing the Oil Pollution Act of 1990 (OPA) requirement to do so. However, the applicable portion of OPA reads ''[E]ach Federal department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities of and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities, consult with the [PWS RCAC] prior to taking substantive action.'' OPA sec. 5002(g). This final rule is not site-specific, nor is it governing activities of a terminal facility. It is regulating vessel activity. As such, the OPA consultation requirement does not apply to this rule.

One commenter noted that the Great Lakes States have repeatedly urged Congress to pass comprehensive legislation to prevent the introduction and spread of NIS from all sources. This is beyond the scope of this rule, as it concerns a request for legislative relief and is not a comment on the NPRM.

One commenter requested that the NPRM be revised to remove what the commenter called a ''presumption'' in the proposed practicability review which the commenter felt favored delay of the phase-two compliance date. As we have noted in this preamble, we have removed the phase-two standard, as well as its compliance dates, from this final rule (*see* V.A. Summary of Changes from the NPRM). We will keep the commenter's concern in mind as we work to issue a subsequent rule that addresses a phase-two standard, as that rulemaking would most likely include a

recurring practicability review provision.

One commenter stated that the applicability of the rule is confusing and needs to be specifically defined and consistent. As noted in preamble section V.A. Summary of Changes from the NPRM, the applicability of the final rule has changed from what was included in the NPRM. We have carefully constructed the applicability section in order to make it less confusing.

One commenter urged that the implementation of the proposed rule be delayed in order to allow time for further research, which could then be used to encourage the development of one uniform, nationwide BWDS. The Coast Guard fully supports all research efforts into the subject of BWM and treatment; however, it would not be prudent to delay implementation of the phase-one standard at this time. As noted earlier in this section, the legislative authority for this rule does not allow the Coast Guard to preempt State actions to implement a more stringent BWDS.

Additional BWM Requirements

Nine commenters asked that the regulations be more specific in how other vessel-related vectors for invasive NIS movements (anchors, anchor chains, hulls) would be managed and enforced.

The Coast Guard agrees that protecting the environment from invasive NIS requires addressing these other vessel-related vectors and will continue to explore how to accomplish this. Aside from clarifying where cleaning of ballast tanks should take place, the final rule continues the applicable requirements from 33 CFR 151.2035 and moves them to 33 CFR 151.2050. The Coast Guard is acting under the legislative mandate in NANPCA, as amended by NISA to direct vessels to carry out management practices necessary to reduce the probability of unintentional discharges resulting from ship operations other than ballast water discharge. 16 U.S.C. 4711(c)(2)(E).

One commenter urged the Coast Guard to expand the language in 33 CFR 151.2050 to specifically address ballasting activities that could affect units of the National Park Service.

The Coast Guard believes the existing regulatory language appropriately captures the units of the National Park Service.

6. Regulatory Assessment (RA) and Initial Regulatory Flexibility Act (IRFA)

Affected Population

Two commenters noted that the NPRM RA addressed only the impact on U.S.-flagged vessels. One of these commenters stated that it is illogical and incorrect to ignore the costs that this rule would impose on foreign-flagged vessels calling at U.S. ports.

The Coast Guard estimated cost impacts for foreign-flagged vessels in the NPRM RA (see Appendix C) and the final rule RA (see Appendix D). As previously discussed, we have also made the phase-one standard as consistent as possible with the IMO BWM Convention's discharge standard. We assume foreign governments that become a party to the IMO BWM Convention and the foreign-flagged vessels they administer to be responsible for the implementation and compliance with the IMO BWM Convention once it comes into force. We assume these foreign government administrations and the foreign-flagged vessels they administer to be responsible for the costs associated with the implementation and compliance of the IMO BWM Convention.

Therefore, in the analyses of the NPRM and this final rule, our primary cost estimate of the phase-one standard rule includes costs to U.S. flagged-vessels only. Historically, Coast Guard's assessment of impacts from regulations related to international conventions have taken into account the costs incurred by U.S. vessels and owners and operators only (e.g., regulations related to The Standards of Training, Certification & Watchkeeping Convention (STCW) and regulations related to the International Convention for the Prevention of Pollution From Ships (MARPOL)).

The Coast Guard received a total of 98 comments related to inland, Great Lakes, and coastwise industries. The breakdown of the comments was 35 comments related to the Great Lakes and 63 related to inland and coastwise vessels. The inland and coastwise industry comments mentioned the following vessel types: towing vessels, barges, and offshore supply vessels. The commenters raised many different issues related to the ballast water operations from these industries, such as the use of municipal/potable water, technology cost and its potential impact on the industry, size limitations, and benefits. The majority of the comments were related to the underestimation of the affected population in the NPRM RA, which did not account for inland vessels, and issues pertaining to the Great Lakes vessels and operations.

Given the issues raised by these and other commenters, the Coast Guard has revised the applicability of the BWDS rule. The Coast Guard is publishing this final rule to apply the phase-one BWDS only to the following vessels intending to discharge ballast water into waters of the United States: vessels entering waters of the United States from outside the EEZ, and those seagoing vessels that operate in waters of the United States in more than one COTP Zone and are greater than 1,600 GRT (3,000 GT (ITC)). The Coast Guard is conducting additional feasibility analysis needed before expanding the applicability in this final rule.

Additionally as noted above, the Coast Guard has decided at this time to exempt vessels that operate solely in inland waters from the phase-one BWDS. The Coast Guard fully intends to expand the BWDS rule to such vessels, as noted in the final rule preamble section V.A. Summary of Changes from the NPRM, but has determined that additional analysis is necessary to support this expansion. We also intend to conduct additional research as necessary.

Regarding the comments about underestimation of affected population, the Coast Guard acknowledges that some inland vessels, towing vessels, and crew boats were not included in the NPRM RA due to their lack of ballasting operations or non-traditional ballast water operations. Detailed justification for not including these vessels is presented on chapter 2, page 37 of the NPRM RA (available in the docket).

Phase-Two Standard

Four commenters expressed concern that the cost estimates for the proposed phase-two standard were not included in any of the supporting documentation or analysis.

One commenter argued that skipping phase-one in favor of adopting phase-two is unrealistic for many reasons, including: (a) An onerous cost of research and development would result to the technology industry, which has already borne the expense of development to the international standards with no appreciable return on investment due to the slow pace of implementation; and (b) the maritime industry would be asked to invest, at a higher cost, in technology that does not have a validated environmental benefit over that resulting from use of systems compliant with other standards.

The Coast Guard acknowledges the comments which stated that the analyses included in the NPRM did not

address the phase-two standard specifically. The Coast Guard has determined that additional analysis is needed, and has already begun development of these analyses. The Coast Guard has decided to move forward with the phase-one standard with the publication of this final rule that does not include the phase-two standard. The Coast Guard will work on developing the economic and environmental analyses to support the evaluation of the phase-two standard.

Phase-One Cost

Five commenters provided statements on the costs of BWMS. One commenter provided cost information for purchasing BWMS ranging between $400,000 and $580,000. Based on this information, this commenter argued that the installation BWMS costs presented in the NPRM are very optimistic. Another commenter provided costs comparisons with the 2009 CSLC Report, ''Assessment of Efficacy, Availability and Environmental Impacts of Ballast Water Treatment Systems for Use in California Waters,'' and a study from the Danish Shipowners' Association (DSA) from June 2009. The commenter noted that the reports present the following acquisition costs ranges: from $150,000 to $2,300,000 and $640,000 to $1,670,000 per system, from the CSLC and the DSA reports, respectively. This commenter also argued that cost to industry could be higher for the phase-two standard, depending on the practicability review. One commenter also cited the 2009 CSLC report presenting estimates of BWMS of 1 to 2 percent of the total cost of a vessel.

Another commenter provided acquisition and installation costs for systems currently being tested from $250,000 to over $2,000,000, depending on the methods used to treat the ballast water. This commenter argued that, although a number of vendors have provided cost estimates to potential customers, these estimates are not based on actual shipboard installations and consequently do not reflect real world issues. This commenter also argued that costs associated with systems which could meet the more stringent standards are expected to be significantly higher.

Another commenter argued that there are insufficient data available related to the actual operation/maintenance costs for use of any system due to the fact that many systems are yet only at the stage of testing to determine efficacy. This commenter also stated that anticipated acquisition and installation costs for systems designed to meet the more stringent phase-two standard are expected to be considerably higher than for the currently available systems.

The Coast Guard acknowledges these comments and has incorporated additional data provided by the commenters in the cost analysis of the final rule RA. The Coast Guard notes that these additional data are within the range of estimates presented in the NPRM RA available on the docket. In the NPRM RA, chapter 3 (table 3.4) presents costs for installation of the BWMS ranging from $250,000 to approximately $2,500,000, depending on the type of the system and the ballast water pumping capacity. Commenters provided estimates ranging from $250,000 to $2,300,000. Thus, the Coast Guard disagrees with the comment that the costs in the NPRM are very optimistic, as the cost ranges provided by the commenters are within the range of the Coast Guard estimates.

Because this type of specialized equipment cannot be independently priced, the cost estimated in the NPRM relied largely on manufacturer-provided data. Manufacturers supplied data for acquisition, installation, operation, and maintenance costs of BWMS. The Coast Guard's cost estimates are based on the best data available at the time of the analysis. The Coast Guard's estimates are consistent with other notable cost estimates such as those made by Lloyds' Register ($145,000 to $2,000,000) and the Congressional Budget Office ($300,000 to $1,000,000).

The Coast Guard is continuously monitoring BWMS technologies for new developments and changes in costs. Contrary to the assertion made by a commenter, the Coast Guard has not estimated the BWMS costs based on vessel values. The Coast Guard acknowledges the comment that achieving higher standards might represent higher BWMS cost. The Coast Guard is working with the industry to identify the potential costs of more stringent standards.

One commenter argued that the installation costs for phase-one approved systems were underestimated in the NPRM RA by three to four times due to the fact that the cost estimates for BWMS uses the smallest system size (system flow) as an average system size. The commenter also provided data based on Shipbuilding Market Forecast. According to the commenter, the data show that the average system size processes between 1,200 m^3 and 1,500 m^3 of water per hour, depending on assumptions regarding relation between dead weight tonnage, total ballast water capacity, and flow. The commenter argued that the cost for such a system could easily be $600,000–$700,000, to which an installation cost of another 25 to 75 percent has to be added depending on whether the vessel is a new build or retrofitted.

The Coast Guard disagrees with the argument that the cost estimates for BWMS in the NPRM RA were based on the smallest BWMS cost. The Coast Guard developed low and high installation cost estimates for BWMS to various vessel types and ballast water capacities. The Coast Guard estimated the BWMS installation costs based on the average costs for each available BWMS. The low costs are related to the least expensive treatment available for different types of vessel with different ballast water pump capacities. The Coast Guard recognizes that not all systems are appropriate for all vessel types. Chapters 3 and 4 of the NPRM RA, available on the docket, present a detailed description on costs estimates.

Benefits

One commenter proposed that the Coast Guard should represent the invasive species' environmental harm in addition to economic harm estimates presented in table 8 of the NPRM.

Table 8 of the NPRM presents estimates of the number of NIS that may cause severe economic damages. The derivation of these estimates is more fully detailed in chapter 5, section 5.5 of the NPRM RA available on the docket. The purpose of chapter 5 of the NPRM RA is to estimate the value of the economic harm caused by NIS in order to estimate monetary benefits from the proposed rule to compare against cost estimates. Chapter 5 presents the total number of NIS invasions due to ballast water in table 5.6, which includes all invasions that cause environmental harm, economic harm or cause no harm. The Coast Guard then limits the further analysis of benefits to those invasions that cause economic damage that can be expressed in monetary terms. The Coast Guard believes that this approach was appropriate for use in the NPRM RA.

The Coast Guard recognizes that some NIS invasions may cause environmental harm that cannot be easily monetized. The Final Programmatic EIS (FPEIS), available in the docket for this rule, further describes the potential environmental harm of invasive NIS.

One commenter suggested that the costs associated with introduced invasive NIS considered during practicability reviews should not be limited to a 10-year time frame but should, instead, be considered permanent costs, since NIS introductions are difficult to fully eradicate and long-term control or containment is often necessary. The

commenter argued that projected costs would likely outweigh the costs of technology development, installation, and maintenance over the long run.

The Coast Guard recognizes that the rule will continue to accrue benefits beyond the time-frame of the NPRM RA. The Coast Guard has added analysis of additional timeframes to the final rule RA representing potential benefits of the rule beyond the 10-year period.

One commenter asked what the additional avoided environmental and social damages and economic benefits of a BWDS would be at more stringent standards.

The Coast Guard included the evaluation of potential benefits from standards that are more stringent than the phase-one standard in the NPRM RA, section 5.7 (available on the docket). The benefits evaluation was based on the mathematical model developed for the DPEIS, which estimated the reduction in the mean rate of successful introductions of various alternatives standards. The mid-range of benefits for more stringent standards varies from $286 million to $447 million.

One commenter argued that ''while the initial costs to implement the proposed standard would likely be several million dollars annually for the first five years, subsequent costs would be significantly lower, likely by an order of magnitude. Vessel owners can generally choose whether/how to spread out such costs over time, since installation costs are usually capital costs that can be amortized over several years. The actual cost for an individual vessel to install and maintain appropriate technology would vary depending on vessel type and size. Therefore, a cost benefit comparison reveals the potential for a significant economic benefit resulting from the relatively small investment by vessel owners.''

The Coast Guard agrees that there are potential significant economic and environmental benefits from this final rule.

Regulatory Flexibility Analysis

One commenter noted that the Coast Guard did not take into account the cumulative impact of other Coast Guard regulations on small businesses. The commenter argued that the BWDS rule will impose more costs on top of the other regulations for affected passenger vessel operations.

For the proposed rule, the Coast Guard completed an Initial Regulatory Flexibility Analysis (IRFA). The specific statutory requirements of an IRFA can be found at 5 U.S.C. 603(b). Under these statutory requirements, we did not consider the cumulative impact of other Coast Guard regulations on small businesses or affected passenger vessel operations. The Coast Guard acknowledges that other Coast Guard regulations have imposed additional costs on vessel owners and operators subject to this rule, which contains revised applicability that excludes most vessels operating solely in coastwise trade as previously discussed.

Many of these published regulations implement international agreements such as the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention for the Safety of Life at Sea (SOLAS). The United States is obligated to implement and comply with these international agreements to which the United States is a party, and to do so, under U.S. law the Coast Guard usually must promulgate regulations that are consistent with these agreements. If U.S. vessels on foreign voyages are not in compliance with applicable international law, it could reduce their ability to engage in commerce and trade. This rule generally aligns with the standards adopted in the International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004 (IMO BWM Convention), which has not entered into force at this time and which seeks to establish global minimum ballast water discharge standards.

Additionally, for this rule, the Coast Guard is acting under the legislative mandates in NANPCA, as amended by NISA, to authorize the use of any alternative methods of BWM that are used in lieu of mid-ocean BWE. As previously discussed, these mandates require the Secretary of Homeland Security to ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels. 16 U.S.C. 4711(c)(2)(A). In addition, NISA requires the Secretary to assess and revise the Department's BWM regulations not less than every 3 years based on the best scientific information available to her at the time of that review, and potentially to the exclusion of some of the BWM methods listed at 16 U.S.C. 4711(c)(2)(D). 16 U.S.C. 4711(e). The Coast Guard is publishing this final rule based on these mandates.

Two commenters argued that, as a part of the financial burden, it is important for vessel companies to note the amount of employees/mariners they have.

The Coast Guard agrees with the commenters and would like to note that the number of employees is taken into consideration in the IRFA. The IRFA is in chapter 7 of the NPRM RA available on the docket. The IRFA's goal is to assess the proposed rule's impact on small entities. Company revenue and number of employees (as well as number of vessels) are variables used in the estimation of potential economic impacts to small businesses.

Small Business Administration (SBA)—Office of Advocacy

The Coast Guard received comments from the SBA Office of Advocacy regarding the impact that the proposed rule would have on small entities. The comments provided by the SBA focused on small businesses within the tugboat, towing vessel, and supply barge industries. According to the SBA letter, these small businesses are concerned that the Coast Guard's economic analysis does not account for a significant number of vessels operated by small businesses. These businesses also contend that installing the required BWMS will not be economically feasible for the large number of vessels that discharge relatively small amounts of ballast water. The SBA also expressed concern about the cumulative effect of the proposed regulations should the phase-two standard be implemented without a longer grandfather period than the 5-year period proposed.

The SBA made the following suggestions to improve the Coast Guard small entities analysis:

(a) Expand the scope of regulatory flexibility analysis to include more vessels (vessels less than 100 feet in length, tugboats, towing and supply vessels).

(b) Consider additional regulatory alternatives to increase flexibility for small business (such as exemption for vessels with relatively low-volume ballast tanks).

(c) Include a grandfather provision in the phase-two standard.

The Coast Guard acknowledges the SBA concerns related to the vessels mentioned previously and is studying the BWM options for small vessels and vessels less than 1,600 GT that operate solely in coastwise trade and inland waters of the United States. The Coast Guard has received numerous comments from these industries and has revised the applicability of the rule. As noted earlier in this preamble, the BWDS in this final rule applies only to vessels entering waters of the United States from outside the EEZ, to coastwise vessels that are more than 1,600 GT, and to certain other seagoing vessels meeting specific size thresholds (*see* V.A. Summary of Changes from the NPRM). The Coast Guard fully intends

to expand the BWDS rule to all vessels, as proposed in the NPRM, but has determined that additional analysis is necessary to support this expansion and to consider issues related to grandfathering for the phase-two standard. We also intend to conduct additional research as necessary.

Other

One commenter stated that our use of certain terms such as ''uncertain'' and ''potential'' does not ''inspire confidence in your justification for the broad scope of the proposed rule.''

The Coast Guard notes that within the regulatory assessment process, the presence of uncertainty is common as information and data are sometimes only partially available or not available at all due to a variety of factors, such as the stages of technologies in research and development. The language used in the NPRM RA correctly reflects the uncertainty inherent in the state of available information and technology. The Coast Guard is monitoring the development of technology and analyzing papers on aquatic NIS for additional data.

Economic Comments Raised in the Context of the DPEIS

The Coast Guard received several comments on the BWDS DPEIS that concerned issues related to economics.

One commenter stated that the range of quantified benefits and annual costs needs to be presented for alternatives 3 to 5 to allow comparison among the alternatives. Another commenter asked if the benefits of ballast water treatment were only evaluated for alternative 2 and further adds that there are few details provided on these cost-benefit numbers and methods. One commenter stated that further discussion and analysis of costs vs. benefits, addressing all of the alternatives considered, would be useful.

In the NPRM RA (available on the docket), chapter 5 (table 5.12), the Coast Guard presents the total potential benefit from different proposed alternatives. The values presented in this table enable the comparison of the benefits of alternatives 2, 3, and 4. Data to support the analysis of alternative 5 is not yet available. In addition, the Coast Guard is further investigating costs and benefits of more stringent standards.

One commenter inquired as to what are the additional avoided environmental and social damages and economic benefits of BWDSs at more stringent standards and asked that the Coast Guard provide quantitative data and sources for all information. The commenter suggested that a study be done on the environmental benefits of marine transportation, especially in terms of higher energy efficiency. The requested study on the benefits of marine transportation is beyond the scope of this rule.

7. DPEIS

Adequacy of Document

One commenter stated that the DPEIS does not provide scientific data to show that alternatives 2 through 4 will ensure that the residual NIS population will not survive, persist, spread, or proliferate in the receiving waters. The Coast Guard agrees with this assessment, but notes that our scientifically-based analytical approach is not intended to show that any of these alternatives will specifically ensure that the residual NIS population will not survive, persist, spread, or proliferate, but rather to evaluate the probabilities of decreased introductions and spreading of NIS among the different alternatives. The NRC report ''Assessing the Relationship Between Propagule Pressure and Invasion Risk in Ballast Water'' states that ''The available methods for determining a numeric discharge standard for ballast water are limited by a profound lack of data and information to develop and validate models of risk-release relationship. Therefore, it was not possible with any certainty to determine the risk of nonindigenous species establishment under existing discharge limits [* * *]'' Chapter 4 of the NRC report discusses in detail the risk-release relationship and a wide range of models related to invasion risk as a function of the probability of a species establishment. The NRC recommendations included: ''In short-term, mechanistic single-species models are recommended to examine risk-release relationships for best case (for invasion)-scenario species.''

One commenter stated that the DPEIS alternatives rely on indicator microorganisms to prevent bacterial invasion, yet the selection of *Vibrio cholera, E. coli,* and Enterococci for this purpose is not well supported and the presence or abundance of these bacteria does not verify the composition or abundance of other potential invasive microbes in the ballast water.

The Coast Guard disagrees with this comment. We developed the DPEIS alternatives through a rigorous process including three separate expert panel workshops, public scoping meetings, and cooperating agency participation. The presence or abundance of the selected indicator organisms is not intended to verify the composition or abundance of other potential invasive microbes in the ballast water but, rather, their purpose is to indicate their presence.

One commenter stated that the DPEIS requires further refinement at all levels because some information is out-of-date, that many of the existing data are not properly cited, and that there are issues with grammar, punctuation, and clarity. The Coast Guard disagrees with this comment. The DPEIS was reviewed by scientific experts and cooperating agencies, and is sufficiently current to describe the affected environment and evaluate the impacts of the discharge standard alternatives. In order to ensure future environmental analysis documents are of the highest quality, the Coast Guard made typographical changes in the Final PEIS (FPEIS), as appropriate.

One commenter requested that the phase-one and phase-two standards listed in the proposed rule should clearly refer back to the alternatives analyzed in the DPEIS. The Coast Guard identified alternative 2 of the DPEIS as its preferred alternative, and this is now the phase-one standard. The phase-two standard was removed from the final rule and will be part of a supplemental environmental analysis, which will be issued either with a notice or other rulemaking document.

One commenter suggested changing DPEIS page breaks so table and figures are not broken up, and not confusing the labeling between tables and figures. The Coast Guard agrees that this can make comprehension of a document difficult, and made changes in the FPEIS, as appropriate.

One commenter suggested defining the term ''microorganism,'' updating the IMO BWM Convention status and data on States' expenditures for bioinvasion mitigation and NIS management, adding a cited reference to Literature Cited, correcting other cites, and providing additional references. The Coast Guard reviewed the indicated DPEIS sections and made changes in the FPEIS, as appropriate.

One commenter stated that a sentence in a discussion of the crab *Hemigrapsus sanguineus* in the DPEIS was incorrectly attributed to the United States Geological Survey and gave an alternate citation. The Coast Guard verified the citation in the DPEIS is correct and the Coast Guard was not able to readily locate the relevant information in the alternate citation provided by the commenter.

One commenter stated that the DPEIS fails to make the case for applying requirements that may be appropriate

for oceangoing vessels to Great Lakes vessels. As we have discussed in this preamble, the Coast Guard has the authority to regulate Great Lakes vessels in this way, and is charged with minimizing introduction and spread of NIS in waters of the United States to the maximum extent practicable (*see* V.B.5 Discussion of Comments: Legal). We note, however, that this final rule does not require Great Lakes vessels to comply with the BWDS at this time, and we must take into consideration the factors identified in 16 U.S.C. 4711(c)(2)(H). We will keep this comment in mind in our evaluation of the practicability of expanding the BWDS applicability to all vessels discharging ballast water in waters of the U.S.

One commenter stated concern that current Coast Guard staffing levels will not be adequate to enforce the criteria during land-based and shipboard reviews of independent certification facilities, or ILs, and that needs to be discussed in the FPEIS. Staffing decisions and needs of Federal agencies are beyond the scope of this rule. However, we note that the Coast Guard has been conducting oversight of ILs for several decades.

The PWS RCAC requested that a copy of the Crude Oil Tanker Ballast Facility Study be included in the FPEIS for this rule and that the 1997 analysis for technology available for current onshore water treatment be updated to 2009 data. PWS RCAC further stated that the proposed rule and DPEIS should be revised and reissued for a second public comment review to ensure that comments and concerns were accurately reflected and included to improve both products.

The Coast Guard acknowledges this comment. The Crude Oil Tanker Ballast Facility Study is now available to the public in the docket for this rule. Finally, while we are not subjecting the NPRM and DPEIS to a second round of comments, we anticipate that we will open another comment period when addressing the phase-two standard and an expanded applicability.

Adequacy of Standard

One commenter stated that the FPEIS must provide a sound scientific basis to support alternative 2 thresholds as means for eliminating or substantially mitigating NIS invasion, not just simply selecting NIS reduction thresholds that are two or three orders of magnitude lower than what arrives in ballast water today. The commenter further stated that the DPEIS does not provide a sound scientific basis for its size distinction and that, empirically, the threat posed by NIS is not a function of organism size.

The Coast Guard disagrees with this comment. The goal of a BWDS, as stated in the DPEIS, is reduction or prevention of NIS introductions and associated impacts. We developed the DPEIS alternatives through a rigorous process including three separate expert panel workshops, public scoping meetings, and cooperating agency participation. The Coast Guard based the resulting standards on an allowable concentration of organisms larger than a specified size criterion, providing a balance between protection and practicability and taking into account the expected capabilities of technology. The BWDS alternatives do not represent the minimum viable populations for all taxonomic groups.

One commenter stated that the proposed *E. coli* and intestinal enterococci standards are not strong enough in that they are less stringent than the EPA's criteria for recreational water contact. The Coast Guard acknowledges that the standards in the BWDS may appear to be less stringent than EPA standards for water quality. However, the water quality standards are for ambient conditions, not discharge standards.

One commenter pointed out that the concept of indicator organisms as surrogates for pathogens has served the drinking water supply industry well since its establishment of presence/absence testing that is now routinely used. The Coast Guard agrees with this comment, and notes that the DPEIS included indicator organisms in some of the alternatives.

One commenter stated that, based on scientific reports from both the United States and Canada, the current BWM measures in place in the St. Lawrence Seaway and the Great Lakes (BWE and salt-water flushing for no ballast onboard vessels) protect the waters of the Great Lakes, making the proposed BWDS unnecessary. The commenter further stated that the proposed phase-one BWDS, according to available science, will ensure that aquatic NIS are not discharged into waters of the United States from vessels. The commenter added that the approach discussed in the NPRM that would bypass phase one and go directly to the phase-two standard is not practicable and it is doubtful that it would provide greater protection of the aquatic environment.

The Coast Guard acknowledges that there have been no new reports of introductions of invasive NIS into the Great Lakes since implementation of the BWM measures mentioned by the commenter. While the lack of reports of new introductions into the Great Lakes is promising and there is a reason to be optimistic that current BWM methods are having an effect, there are continuing reasons to be concerned and not to accept these findings as definitive. For instance, the lack of comprehensive sampling may mean that some events have not been detected. Other possibilities are that there have been introductions, but that there have been lags in species establishment. Also, we note that the practicability review process referenced by the commenter was designed to ensure that any bypass of phase one to phase two would only occur if it could be practicably achieved.

Consideration of Treatment Method Impacts

Two commenters pointed out that the DPEIS does not address the impacts of specific BWMS.

Another commenter said that the statement in the DPEIS that alternatives 2 through 5 would not have additional adverse impacts on environmental and socioeconomic resources might not be an acceptable assumption for some treatment options (such as chemical disinfectants).

Two commenters recommended that the Coast Guard explicitly consider the environmental impacts of approaches to meet BWDS. The first commenter focused on methods that could involve active substances at high concentrations that could be persistent, toxic, or both. The second commenter recommended that the Coast Guard assess treatment technologies in coordination with the EPA by conducting a FPEIS in conjunction with the practicability review and include the impacts of both biocide residuals and treatment byproducts, cumulative impacts (multiple discharging ships and multiple types of active substances), and to ensure that discharges are consistent with Clean Water Act requirements.

One commenter stated that the DPEIS does not analyze the effects of potential technologies and methods for achieving BWDS, including chemical residuals, reaction by-products, thermal pollution, energy use, and dockside impacts, and that until those are evaluated, impacts on ESA listed species cannot be assessed. The commenter stated that the agency understands that the ''action'' is establishing standards, and continues to support the process for establishing the standards.

The Coast Guard acknowledges these comments and clarifies that ballast water treatment systems were not included in the DPEIS. However Appendix F of the FPEIS does include an analysis of ballast water treatment

technologies in use by vessels enrolled or being reviewed by STEP as a means to show the practicability of the BWDS set forth in this rule. This information is not meant to be detailed or all-inclusive. Methods to achieve the standard will be evaluated in separate environmental analyses as part of the approval process. All appropriate actions, resources, and impacts will be taken into account.

One commenter inquired about a statement in the DPEIS under the description of chlorine as a biocide that impact to ships' ballast tanks from the corrosion is a concern, asking whether it is a Coast Guard or a maritime industry concern, and why. The Coast Guard is concerned with any potential corrosion issues that could affect the safety or life of a vessel. Any BWMS that is going to require additional maintenance or shorten the life of the vessel has the potential to cause ripple effects through the maritime transportation system.

One commenter stated that it is very difficult, given the current stage of scientific evidence and BWMS, to discuss the merits of more stringent standards than those imposed by IMO, especially as extreme an alternative as sterilization. The commenter further stated that sterilization of ballast water would task the maritime industry with an unwarranted standard and would probably be impossible to achieve. The Coast Guard agrees that the total sterilization of ballast water, specifically in regards to microbiological organisms, is challenging, if not impossible to achieve. The preferred alternative was developed taking into consideration environmental protection and practicability, including the economic and technical aspects of implementing BWDSs.

One commenter stated that destruction of spore-like phases of marine life may be impracticable without actually distilling ballast water and, even so, any residue may well have to be treated as toxic waste. Another commenter stated that BWM will prevent organisms from reproducing and releasing larvae into the environment.

The Coast Guard does not agree or disagree with these comments, as they relate to specific types of BWMS. As noted earlier, specific BWMS were not included in the DPEIS. These specific BWMS will be evaluated in separate environmental analysis as part of the approval process. All appropriate actions, resources, and impacts will be taken into account in that process.

Two commenters stated that the foundation for setting any BWDS under NEPA is the ability to conduct a cost/benefit assessment, but that it cannot be done because there is no way to predict or quantify the environmental benefit (measurement of invasions which did not occur) of the treatment alternatives. The commenter explained that a reasonable cost/efficacy ratio and measurable reduction of introduced organisms are needed, and without a reasonable, scientifically-based metric to show continual improvement, the perceived benefit may not meet measured benefit, leading to more stringent regulation and additional implementation costs.

The Coast Guard disagrees with these comments. As we have discussed, specific BWMS were not included in the DPEIS, but the FPEIS does include an analysis of STEP vessels with ballast water treatment technologies as a means to show the practicability of the BWDS set forth in this rule. Methods to achieve the BWDS will be evaluated in separate environmental analyses during the approval process for each BWMS. Additionally, the Coast Guard did conduct a scientifically based analysis to predict the relative probability of NIS establishment for the discharge standard alternatives in the DPEIS. For purposes of complying with NEPA, the Council on Environmental Quality regulations state that weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.

DPEIS Modeling Comments

One commenter stated that treating a lack of current science as meeting the ''best available science'' requirement of NISA may be a practical necessity in order to adopt an environmentally protective and economically rational standard in the near future. The commenter did not think it is reasonable to assess in advance the biological effectiveness of this ''first established standard,'' as there would be no other numeric standard to compare to. The commenter also stated that the relationship between the frequency and magnitude of introductions and the probability of successful NIS establishment should be a priority for future research to establish a baseline for future adjustments to discharge standards.

The Coast Guard disagrees with this comment. First, the statutory requirement from NANPCA, as amended by NISA, is that we use ''best scientific information available,'' not ''best available science.'' Second, although the amount of scientific information available on aquatic NIS is not ideal, the Coast Guard conducted a scientifically-based analysis to predict the relative probability of NIS establishment for the BWDS alternatives in the DPEIS. New information on the probability of aquatic NIS establishment will be considered for future evaluation of discharge standards.

Two commenters stated that the Coast Guard argues convincingly that population viability analysis (PVA) is the most suitable analytical methodology to use for the NEPA analysis, and that we should consider revisiting the approach if new information becomes available in intervening years. The Coast Guard agrees with the comment. New information on the probability of aquatic NIS establishment will be considered for future evaluation of discharge standards.

One commenter asked whether there is precedent for using PVA for the type of NIS application that the DPEIS addresses. Another commenter expressed concern that the Coast Guard has not provided sufficient documentation to support the use of PVA ''in a marine or aquatic situation with invertebrates and/or microorganisms.''

As the Coast Guard noted in the DPEIS, the application of PVA to marine and aquatic invertebrates and microorganisms is novel. However, this does not affect the underlying scientific logic of this approach (e.g., Andersen 2005). PVA has been applied to terrestrial invertebrates (e.g., Schultz and Hammond 2003). The diffusion model on which the PVA in the report is based has been applied to microbial populations (e.g., Ponciano et al 2005).

One commenter stated that an evaluation of extinction probability needs to consider cumulative ballast discharges from multiple ships rather than just individual discharges from single ships, and examine the assumption that an initial population released from an individual ship is completely separate and isolated from other organisms released in the same area, since several discharges in the same area may build a population to viability before extinction can occur.

The Coast Guard acknowledges this comment and will take this opportunity to clarify. Based on available data, the analysis focused explicitly on a single discharge. In order to address the broader question of the effect of the proposed BWM measures on the rate of species introductions from multiple discharges, the Coast Guard would require information about the number, magnitude, and timing of the multiple

discharges and about the species present in each discharge. As identified in the NRC report, there are data gaps (''a profound lack of data and information'') and therefore, there is no presently available information on multiple discharges. As recommended by NRC, models need to be developed to assess these risks and to link to new information as they become available. The Coast Guard will consider models that may be available during their practicability review under NISA. This may provide additional information to address the risk associated with multiple ballast discharges.

One commenter claimed that the analysis assumes that ''a percentage reduction in abundance is directly and linearly related to reduction in successful invasion probability.'' The Coast Guard disagrees with this comment. The relationship between a percentage reduction in abundance and the probability of successful invasion is not assumed, it is based on the underlying diffusion model for population growth. Furthermore, the relationship is not specifically linear for this model; reducing initial abundance by a factor f increases the probability of extinction (i.e., unsuccessful invasion) by a factor f^{-c} where the parameter c depends on the parameters of the population model.

A commenter stated that it would be helpful for the DPEIS to give at least some consideration to organisms 10 micrometers and smaller, given the potential for pathogenic microorganisms to be transported in ballast water, using the framework adopted in Appendix A for larger organisms. Another commenter was concerned that the technical approach in the DPEIS does not adequately consider pathogens in the analysis. The Coast Guard disagrees with these comments. Microorganisms and pathogens were considered throughout development of the BWDS alternatives and are included in the BWDS in the form of indicator species. The PVA analysis in Appendix A was not applied to microorganisms because, for smaller organisms, the lower bound of the mean density range is already below the limits of alternatives 2 through 4 and that the Coast Guard was not aware of any basis for a scientific, defensible, and enforceable discharge standard for microorganisms.

One commenter stated that the technical approach to justify the proposed standards needs to include the transportation of bacterial and viral NIS pathogens, including the fish-killing Viral Hemorrhagic Septicemia (VHS) virus, by larger NIS that are infected. The commenter said that ballast water discharge containing infected organisms could transmit the pathogens, whether the host is alive or dead.

The Coast Guard agrees with this comment. Microorganisms and pathogens were considered throughout development of the BWDS alternatives and are included in the standards themselves in the form of indicator species. The analysis' technical approach addressed the two larger size classes of organisms in alternatives 2 through 4, not microorganisms, given that for smaller organisms, the lower bound of the mean density range is already below the limits of alternatives 2 through 4. The Coast Guard was not aware of any basis for a scientific, defensible, and enforceable discharge standard for microorganisms.

One commenter stated that the DPEIS assumption for the PVA model, that N(t) follows geometric Brownian Motion, should be better clarified and defined, and is probably inappropriate for larger organisms than the smaller than 50 micrometer class, since larger organisms move based on several variables such as habitat and water temperature (which could also affect motion of organisms smaller than 50 micrometers).

The Coast Guard disagrees with the comment. The diffusion model does not assume that individuals do not move in response to environmental factors. It is possible that the commenter confused the population model—which is called Brownian motion—with a model of the same name of the movement of individuals.

One commenter stated that the complexity of predicting the introduction and establishment of NIS and the lack of the necessary detailed information do not justify the Coast Guard's use of a ''generic data-poor approach'' to analysis. The commenter also questioned whether PVA is appropriate or useful for an unknown, large number of different species with differing characteristics and dynamics that may be present within a ballast tank, since the Coast Guard states ''PVA is typically used to assess the status of a particular population and therefore typically involves the development of a model of each population of interest separately,'' and is ''a routine tool for assessing the dynamics and extinction properties of a single population.''

The Coast Guard notes that the commenter's acknowledgment of the lack of detailed information implies that any approach will be ''data-poor.'' The diffusion model PVA approach used in the DPEIS is the best available to science that is appropriate for this purpose. The application of PVA to ''an unknown (but large) number of different species'' was necessitated by the problem at hand: namely, to evaluate alternative national standards for BWM. The diffusion model used here is quite general and applicable to different populations. The values of the parameters of this model are likely to vary from species to species and environment to environment. To account for this, the analysis considered a reasonable range of parameter values. As discussed in the NRC report, the PVA model is acknowledged as one of a group of models that can assess the relationship between invasion risk and propagule pressure. The NRC report goes on to conclude that ''models of any kind are only as informative as their input data. In the case of ballast water, both invasion risk and organisms density discharged from ballast water are characterized by considerable and largely unquantified, uncertainty.''

One commenter stated that there are gaps in the knowledge of invasion biology required to assess the impacts of a treatment standard and the relative degree of added benefit as compared to BWE. The Coast Guard acknowledges this comment. Although the abundance of scientific information on aquatic NIS is not ideal, the Coast Guard conducted a scientifically based analysis to predict the relative probability of NIS establishment for the discharge standard alternatives in the DPEIS.

One commenter suggested that the statement from DPEIS Appendix A that ''considerable uncertainty attaches to the estimate of the extinction probability factor and the mean rate of successful introductions relative to the baseline'' needs to be included as a disclaimer in the main body of the PEIS. The Coast Guard agrees and made that addition in the FPEIS.

One commenter stated that separate risk analysis and assumptions are needed for the freshwater environment on the Great Lakes and offered general information and references on salinity toxicity effects, expected number of future invasions, and BWE effectiveness. The Coast Guard disagrees with this comment. Given that the PEIS is programmatic to apply to the wide variety of ecosystems in the affected environment and the generic nature of the PVA diffusion model, the analysis is applicable over the range of the impacted area.

Two commenters questioned the assumed range of 0.001 to 0.1 of for the values of c, the biological population parameter. The first commenter stated that the instantaneous growth rates for many planktonic organisms are well-known and others can easily be determined experimentally. The second

commenter stated that there is no justification for the selection of this range, and no discussion of whether populations might typically tend towards either end. The first commenter further stated that the values for the statistical representation of the estimated total initial number of organisms released in a single ballast water discharge is extremely variable and questioned how the values can give a good representation of the number of organisms discharged from a typical ballast tank.

The Coast Guard neither agrees nor disagrees with these comments. As we explained in Appendix A of the DPEIS, we chose this range to reflect the best available estimates of the extinction probability for species introduced through ballast water discharge. The paper by Calbet and Landry (2004) provides daily growth rates for planktonic organisms in their native habitats. A central issue regarding NIS is the fate of organisms introduced into habitats that are not their native ones. Furthermore, the critical parameter c depends not only on the growth rate of a population, but also on its variability. The values characterizing the initial number of organisms are based on the work of Minton et al. (2005) and provide the best available representation of variability in the number of organisms released in a single ballast water discharge.

One commenter stated that the assumptions that the ballast water of a single vessel contains 12 ''new'' species, that the most abundant is 50 percent of the total abundance, and that the ordered relative abundances follow the geometric model is an ''extremely huge'' set of assumptions to make and there is lack of reasoning behind them. Furthermore, the commenter was concerned that a large number of species may have been missed, since the 12 value comes from a study evaluating organisms of a different size class than the alternatives, and was concerned that there is no presentation of variation around the mean for 12 new species.

The Coast Guard disagrees with this comment. We provided the rationale for each assumption in Appendix A of the DPEIS, which states that the assumed values were based on the paper by Smith, et al. (1999). Despite its limitations, this study reflects the best available information on the species composition of ballast water. The application of the PVA diffusion model was conducted by experts in the biological and statistical fields and reviewed by others, including cooperating agencies. The PVA diffusion model provided a generic, non-species-specific model that, in conjunction with other information, was used to provide insight into the potential relative impacts of the alternatives, based on probability of NIS establishment.

One commenter stated that there should be more consistent use of lower and upper case letters for variables/parameters in the DPEIS, and that the clarity of the extinction probability equation would be improved by indicating the baseline extinction probability with a different term/subscript, providing more information on its derivation, and correcting the relationship to read $f_e = f^{-c}$ $f_e = f^{-c}$. The commenter also suggested that q(m) (the probability that at least one species is successfully introduced) should be defined in the DPEIS body text and that Ne (the percent increase in q(m) over the baseline scenarios) should be defined.

The Coast Guard disagrees with the comment regarding the extinction probability equation. The equation follows from simple algebraic substitution and no further details should be needed. On the notation for baseline extinction probability, Appendix A already distinguishes between baseline extinction probability and extinction probability when initial abundance is reduced by a factor f. The Coast Guard agrees the correct relationship is $f_e = f^{-c}$ $f_e = f^{-c}$ and changed the FPEIS from ''extinction probability factor $f_e = f^{-c}$ $f_e = f^{-c}$'' to ''extinction probability factor $f_e = f^{-c}$ $f_e = f^{-c}$'', as in Equation (7). The Coast Guard acknowledges the comment regarding the terms q(m) and Ne and made changes in the FPEIS, as appropriate.

One commenter stated that there is no sensitivity analysis or quantification of model error with which to evaluate the PVA model used in the DPEIS. The Coast Guard disagrees with this comment. Throughout the DPEIS, results are given for alternative values of key parameters.

One commenter stated that discussion in the DPEIS on the importance of default values for multiple species is incomplete, and that examples of predictions for probability of at least one introduction in multiple species scenarios could convey a false sense of security. The commenter also stated that using a default value of only twice the median number of organisms released results in a nonzero, albeit small, probability of at least one species being introduced in the alternative 4 scenario and that this sensitivity issue should be discussed in the DPEIS.

The Coast Guard disagrees with the comment. We provided the rationale for these default values in Appendix A of the DPEIS. The commenter's own calculation of the effect of doubling the default of the total number of organisms in a discharge event shows that these results are not highly sensitive to changes in the default values.

One commenter stated that the modeling results for multiple species support the conclusion that more stringent treatment alternatives will substantially reduce the likelihood of new NIS introductions via ballast water. The Coast Guard acknowledges this comment, but notes that the correctness of this statement depends on the definition of ''substantially.''

One commenter responded to a question in the NPRM asking for any studies on the effects of propagule pressure on successful establishment of a NIS in aquatic ecosystems by referring to the research being performed by the Canadian Aquatic Invasive Species Network in relation to shipping mode and route, and factors affecting establishment success. The Coast Guard may use this information in a future evaluation of discharge standards. The Coast Guard will continue to follow the relevant literature in this area.

One commenter stated that it seems, from the relative effectiveness results of the analysis of BWDS alternatives, that the approach assumes that discharges in compliance with the different alternatives contain the stated number of organisms in the respective groups, and that the proposed phase-one standard is equivalent to the IMO discharge standard. The Coast Guard agrees with the comment.

One commenter cited an error in Appendix A, table 5–8. For the scenario with Ne = 100, c = 0.00008 and alternative 3, q(m) should be 0.00025, not 0.0025. The Coast Guard agrees with this comment and made this correction in the FPEIS. Ne is the percent increase in q(m) over the baseline scenarios, q(m) is the probability that at least one species is successfully introduced, and c is the biological population parameter.

One commenter stated there is no evidence to suggest that the standards outlined in alternatives 1 through 4 are biological thresholds that represent minimum viable populations for all taxonomic groups. The Coast Guard agrees with this comment, however, this is not relevant to the analysis. The BWDS alternatives do not represent the minimum viable populations for all taxonomic groups. We developed these alternatives through a rigorous process including three separate expert panel workshops, public scoping meetings,

and cooperating agency participation, and the Coast Guard based the BWDS alternatives on an allowable concentration of organisms larger than a specified size criterion, providing a balance between protection and practicability and taking into account the expected capabilities of technology.

DPEIS Affected Environment Comments

One commenter suggested that the Coast Guard expand the scope of the DPEIS to encompass the ''big picture'' by including other adjacent, interconnected water bodies, such as the Canadian waters of the Great Lakes, and including other interacting programs such as U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). The commenter also suggested including information in the DPEIS from an authority on VHS and Federal agency publications on treatment methods.

The Coast Guard disagrees with this comment. The DPEIS is a programmatic document, and areas were addressed at the national and ecosystem level, including a freshwater ecosystems section. APHIS participated in the preparation of the DPEIS as a cooperating agency in accordance with 40 CFR 1501.6. BWMS were not included in the DPEIS and methods to achieve the standard will be evaluated in separate environmental analysis as part of the approval process. Vessels with BWMS enrolled in STEP are included in the FPEIS as a means evidence the practicability of the BWDS proposed in this rule.

Another commenter suggested including a major western freshwater system under the DPEIS section on freshwater ecosystems and cited the Columbia River and its watershed as very significant. The Coast Guard agrees with this comment, and added the Columbia River as an additional example in the FPEIS.

One commenter suggested separating public health and shipping safety, and expanding the latter in the Affected Environment chapter of the DPEIS. The Coast Guard agrees and made these changes in the FPEIS.

One commenter stated that the proposed rule and DPEIS are both over-inclusive (too many vessels and areas) and under-inclusive (some remedies not considered, such as using other water or other ballasting methods). The Coast Guard made changes to the final rule, including revised applicability to include additional exemptions and clarification of other water and ballasting methods, which address the examples given as evidence that the NPRM and DPEIS were both over- and under-inclusive. These changes are summarized in this preamble in V.A. Summary of Changes from the NPRM.

One commenter explained that the physical environment of the Great Lakes is more susceptible to ecosystem damage due to isolation and slow flushing rates as compared with estuarine and ocean coastal areas. The Coast Guard notes this comment, but did not include Great Lakes flushing rates in the FPEIS because it analyzed the BWDS alternatives from a nationwide scope, not by specific geographic area.

One commenter stated that since the Great Lakes are one of the primary freshwater resources affected by BWDS, the DPEIS could include additional Great Lakes-specific information and references. The commenter further suggested that it may be useful to highlight Lake Superior as a less stressed system than the other Great Lakes and discuss the Great Lakes Fishery Commission's fishery management objectives pertaining to habitat in the Great Lakes. The Coast Guard disagrees with this comment. The Great Lakes were addressed as a whole in the DPEIS, not individually.

Two commenters stated that the Coast Guard recognizes the environmental damage caused by NIS, and they explained that the rapid spread of freshwater invaders from the Great Lakes illustrates that protecting the Great Lakes from ballast-mediated invasions protects freshwater ecosystems across North America. The Coast Guard acknowledges these comments.

One commenter suggested adding Asian clams to the DPEIS discussion of the round goby and updating the analysis to include costs of the second underwater electric barrier. The same commenter suggested modifying the statement about the abundance of Diporeia in Lakes Michigan and Huron from non-existent to vastly declined, and highlighting additional examples of food web changes related to NIS. The Coast Guard disagrees with the first comment. The round goby was cited as an example and does not need elaboration. The remaining changes were made, as appropriate.

One commenter suggested that waters within many National Park units may represent the best available examples of healthy marine ecosystems, and should be recognized explicitly in the DPEIS and NPRM via a clear prohibition of ballast water discharge within their boundaries. The Coast Guard disagrees with the recommendation for a blanket prohibition of ballast water discharge within National Park waters. We note, however, that 33 CFR 151.2050 requires vessel owners to avoid ballast water discharge in marine sanctuaries, marine preserves, marine parks, or coral reefs.

One commenter stated that habitat destruction and loss should be included as a stressor impacting marine, estuarine, and freshwater environments, being that it has been implicated as the greatest threat to imperiled species and gave a reference. The commenter also stated that the other stressors and examples in the DPEIS need to have citations for the references used. The Coast Guard disagrees with the comment. Habitat destruction and loss already are mentioned and cited in several places in the DPEIS.

One commenter stated that the DPEIS doesn't quantify some of the worst NIS, such as zebra mussels. The commenter also takes issue with the apparent focus on populated aquatic environments that are already compromised by NIS at the expense of protecting all aquatic environments, from the pristine to the heavily used. The commenter said that when all the economic benefits of protecting environments from NIS are evaluated, a preventative mode is more cost effective than mitigating undesired effects.

The Coast Guard disagrees with this comment. The effects of zebra mussels and other NIS are mentioned in several places in the DPEIS. A BWDS under NANPCA/NISA is intended as a practicable standard that significantly reduces the risk of invasions in all aquatic environments.

One commenter suggested that the Coast Guard define ''dead zones,'' or use the terms ''anoxia'' or ''hypoxia'' to better describe the situation. The Coast Guard agrees with this comment, and made the changes in the FPEIS to clarify that there will be fewer introductions and spreading of NIS in comparison to a scenario without a BWDS.

One commenter pointed out an apparent inconsistency where the DPEIS states two different numbers of NIS reportedly established in San Francisco Bay. The Coast Guard made the changes in the FPEIS.

One commenter suggested that the Coast Guard explain what is meant by ''increased competition'' in the DPEIS description of impacts on bird health. The Coast Guard made the changes in the FPEIS.

One commenter suggested that the Coast Guard update all of the economic information in the DPEIS Economic Status section to reflect the recent downturn in the economy. The commenter specified that they believed the statement that tourism and recreation have provided all of the job

growth to the U.S. ocean economy within the last decade was outdated and not accurately cited. The Coast Guard disagrees with this comment, as the socioeconomic information in the DPEIS is intended to represent a longer term, e.g., a decade or more. We verified the citation and the statement is accurately cited.

One commenter pointed out that billions of dollars are spent and anticipated for dealing with NIS. The commenter also felt that the value of Michigan's extensive water resources and their uses must be taken into account, and that the cost of not pursuing a more rigorous standard for the Great Lakes is billions of dollars annually and will result in incalculable natural resource losses. The Coast Guard neither agrees nor disagrees with this comment, however, the PEIS is a programmatic document, and areas, including socioeconomic impacts such as water resources, were addressed at the national and ecosystem level not the State level.

PEIS Alternatives Comments

One commenter expressed general support of the DPEIS, stating their appreciation of the use of the best available science and models to justify the numeric discharge standard. The Coast Guard notes that the standard from NANPCA, as amended by NISA, is for the Coast Guard to use ''best scientific information available,'' not ''best available science.''

One commenter stated that the sizes range for the alternative standards should extend to below 0.01 micrometers, to incorporate most pathogenic viruses, including the VHS fish virus. The commenter also said that the possibility of man-made pathogens or fragments of viruses which could be used to contaminate freshwater city water supplies on the Great Lakes and deserve special treatment due to their risk of adversely affecting most native fisheries in the Great Lakes and adjacent waters.

The Coast Guard disagrees with this comment. Three separate expert panel workshops, public scoping meetings, and cooperating agency participation contributed to progressive development of the BWDS alternatives. As a result, the Coast Guard decided that pathogenic microorganisms, which include viruses, would be represented in terms of indicator bacteria. The BWDS alternatives do not apply by specific area.

One commenter recommended that the PEIS define organism size classes for BWDS alternatives in more detail by specifying where on the organism the measurement is done and to use organism taxa in the categorization. The commenter also recommended clarification on whether chain forming algae should be classified by size of individual cells or size of colonies. The commenter stressed that the Coast Guard must keep in mind the ultimate goals of reducing or eliminating the risk of invasive species when classifying organisms by size. The Coast Guard reviewed the information provided but did not make changes in the FPEIS, as we believe there is sufficient information in the FPEIS as it stands.

One commenter stated that he or she does not support a no-action alternative. The Coast Guard appreciates the commenter's input, however, the no-action alternative is used as a baseline in the environmental analysis, not as an action alternative. Council on Environmental Quality regulations require the Coast Guard to evaluate the no-action alternative. 40 CFR 1502.14(d).

One commenter stated that the discussion of the no-action alternative should include that a vessel-by-vessel approach is not practical, and that using BWE as the benchmark for system effectiveness is not sufficiently protective of the waters of the United States. The Coast Guard disagrees with this comment. Council on Environmental Quality regulations require the Coast Guard to evaluate the no-action alternative; it is used as a baseline in the environmental analysis, not as an action alternative. *Id.*

One commenter stated that ballast water retention, part of the no-action alternative, would eliminate the introduction of species via ballast water discharge, thus it is not appropriate for the DPEIS to state that the no-action alternative will not eliminate the introduction and spread of NIS. The commenter further stated that the DPEIS should make it clear that, while a BWDS is more protective than BWE, ballast water retention is more protective than a BWDS, and that many vessels do not have to take any BWM actions under current regulations and can release untreated coastal ballast water.

The Coast Guard disagrees with the comment. The no-action alternative is intended to reflect a set of options, any of which a vessel may use or not use, due to preferences or capabilities. Thus the no-action alternative as a whole will not eliminate the introduction and spread of NIS. The Coast Guard acknowledges in the DPEIS that some vessels may not be able to conduct BWE depending on vessel design, age, load, sea conditions, and safety concerns.

One commenter stated that it is confusing to include ballast water treatment under the no-action alternative, and wondered if the Coast Guard intended to state that treatment that is equal to or better than BWE, without the development of a BWDS, is part of the no-action alternative. The Coast Guard disagrees with this comment. The no-action alternative reflects the baseline of current BWM requirements, which includes the option of using an approved treatment that is equal to or better than BWE. The no-action alternative is intended to reflect a set of options, any of which a vessel may use or not use, due to preferences or capabilities.

A commenter stated that the DPEIS overstates the difficulty of achieving alternative 5 because a number of sterilization options listed in Appendix F, including gaseous chlorine, which is widely used at municipal water treatment facilities, essentially sterilize drinking water. This commenter also said that the DPEIS further overstates alternative 5's difficulty by asserting that alternative 5 is the same as elimination of ballast water discharge. The Coast Guard disagrees with this comment. Specific BWMS were not included in the DPEIS and the BWMS analyzed in Appendix F of the FPEIS is limited to providing a rational basis of the practicability of a proposed alternative. Methods to achieve the standard will be evaluated in separate environmental analysis. The DPEIS did not state that alternative 5 is the same as elimination of ballast water discharge but, rather, that the most feasible approach for achieving it is through the elimination of ballast water discharge.

Two commenters stated that, in 1997, Congress required the Coast Guard to examine the feasibility of modifying the Valdez Marine Terminal to prevent the introduction of NIS, and suggested that such a study be included in the docket and examined in the PEIS. They further suggested that the PEIS should include an alternative that examines whether a NIS treatment option can be accelerated at the Valdez Marine Terminal ahead of the proposed phase-one and phase-two schedules. The commenters also stated there are onshore treatment solutions for vessels, including crude oil carriers.

The Coast Guard disagrees with this comment. Vessels discharging ballast water to shore or vessel/barge-based treatment facilities essentially achieve alternative 5 (near sterilization) by not discharging to the waters of the United States. It would not be practicable to develop a PEIS alternative involving shoreside facilities, as there are not currently any available that are designed

to remove living organisms from ballast water. They can be viewed as one of the potential options available to vessels.

One commenter stated that ballast water treatment must ensure that ballast does not contain NIS of sufficient quantity to allow survival and inoculation, and that DPEIS alternatives 2 through 4 do not assure this standard can be met, but that alterative 5 does. This commenter and one other stated that the alternative 2 standard is not appropriate for the entire United States, because site-specific treatment options may be able to achieve treatment that exceeds the alternative 2 standard. The first commenter stated that alternative 5 should be the goal, with reduced standards allowed only when it is proven technically infeasible to meet this goal.

The Coast Guard disagrees with these comments. The DPEIS evaluated the BWDS alternatives, not the means of meeting them. Any methods to achieve the standard, including ballast water treatment, will be evaluated in a separate environmental analysis as part of the approval process. However, as stated previously, the FPEIS does analyze STEP vessels with BWMS to determine the practicability of the BWDS set forth in this rule. The goal of a BWDS, as stated in the DPEIS, is the reduction of NIS introductions and spread and associated impacts.

One commenter stated that the Coast Guard should attempt to implement the most protective alternative available in the absence of detailed environmental data to determine the population level at which an introduced species will survive. The commenter also noted the difficulty in comparing the effectiveness of alternatives 1 through 4, and acknowledged that alternative 5 will not remove the risk of all NIS introductions. The commenter further recommended that alternative treatment systems, such as onshore facilities, be considered in more detail during the practicability review.

The Coast Guard disagrees with this comment. NEPA does not require a Federal agency to select the most environmentally protective alternative. Currently, there are no U.S. type-approved BWMS intended for use onboard vessels that can practicably and safely achieve complete sterilization of ballast water. Although difficult, the Coast Guard made a scientifically-founded evaluation of the alternatives. The preferred alternative was developed taking into consideration environmental protection and practicability, including economic and technical aspects.

The Coast Guard also disagrees with the commenter's suggestion to take onshore facilities into account during practicability reviews. The purpose of the practicability review is not to establish that there are alternatives to shipboard BWMS capable of meeting the applicable BWDS, but to determine specifically whether such shipboard BWMS are practicably available. The presence of onshore facilities will not factor into that analysis.

One commenter requested that the DPEIS be revised to provide a complete quantitative analysis of alternative 5, as required by NEPA. The Coast Guard disagrees with this comment. NEPA does not require a quantitative analysis of each alternative, but rather ''to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes.'' Since alternative 5 is the only alternative that assures that no living organisms larger than 0.1 micrometer are released via ballast water the impacts on environmental resources are expected to be minimal.

One commenter stated that the Coast Guard's preferred alternative does not achieve a sufficient reduction in the predicted mean rate of successful NIS introductions. The Coast Guard disagrees with this comment. Under NISA, Congress authorized the use of environmentally sound alternative BWM methods that are at least as effective as BWE in preventing and controlling infestations of aquatic NIS. The preferred alternative achieves that requirement.

One commenter provided the information that over 80 percent of vessels arriving in California retain all ballast onboard, to refute the DPEIS statement that few vessels have the ability to retain ballast onboard. The commenter further stated that vessels may conduct internal ballast transfers or alter cargo handling operations to reduce the need to de-ballast.

The Coast Guard disagrees with the comment. The Coast Guard does not believe that such retention percentages are applicable to many vessels calling at U.S. ports. Ballasting operations depend on whether vessels are offloading or loading cargo, on vessels' ability to carry near-maximum cargo loads on all legs of a voyage, and on the design and configuration of the vessel (e.g., bulk carriers cannot retain ballast water, whereas container vessels may have the physical capacity to do so).

One commenter stated that the PEIS should note that the existing BWM strategy (mid-ocean BWE) is not enforceable to any degree of accuracy. This comment is beyond the scope of the DPEIS. We note, however, that the Coast Guard enforces the BWE requirement during both port state control boardings and annual inspections of vessels, and that there have been a variety of civil penalty actions which directly contradict the commenter's assertion.

One commenter stated that since alternative 2 is not the most environmentally protective one, the Coast Guard must further discuss why this alternative is preferred. The Coast Guard's environmental and socioeconomic rationale for selecting alternative 2 as the preferred alternative is stated in the FPEIS.

One commenter pointed out that the DPEIS states that a 2001 workshop in Oakland, CA recommended, as a long-term proposal, the complete removal or inactivity in ballast water for the first two functional groups (coastal holoplankton-meroplankton-demersals and phytoplankton-cysts-algal propagules). The commenter wanted to know why this is not considered as a long term goal, even if it were to be a protracted implementation.

The Coast Guard used information from the 2001 workshop and from other expert panel workshops, public scoping meetings, cooperating agency participation, and other sources in developing the proposed BWDS. The goal of a BWDS is prevention of NIS introductions and spread and associated impacts. The phase-two standard proposed in the NPRM was based on the most stringent quantitative standards currently in place in a state. However, under NANPCA/NISA, any proposal of a standard must consider practicability, which accounts for the non-inclusion of a no living organism standard.

PEIS Environmental Consequences

One commenter stated that the phase-one standard is less effective than BWE. The Coast Guard disagrees with this comment. Chapter 4 and appendix A of the PEIS show that alternatives 2 and 3 are more effective than the no-action alternative.

One commenter stated that nektonic organisms were not included in chapter 4 of the DPEIS. The Coast Guard disagrees with this comment. Nektonic organisms (e.g. fish), though not directly addressed as a group, are indirectly addressed throughout the FPEIS.

One commenter suggested that ballast water discharge is one of the key vectors for viral transmission, especially VHS. The commenter said that, with no special regulation for Great Lakes vessels, viruses (such as VHS) could

spread through Lake Superior and possibly move into other waterways.

The Coast Guard has not identified any studies that directly identify ballast water as a documented VHS vector in the Great Lakes. There is a need for further information on possible vectors, including ballast water, vessel fouling, and live and dead fish. The Coast Guard notes that the BWDS alternatives do not generally apply by specific geographic area, but rather are nationwide in scope. However, we will keep this comment in mind as we conduct more research into the effects of implementing a BWDS in the Great Lakes, as well as nationwide.

One commenter stated that impacts of a BWDS need to be clarified as far as it would affect ecology, the economy, industry, and society, among other aspects. The Coast Guard believes that the DPEIS addressed those issues at the programmatic level.

One commenter suggested that the sentence ''Economic sectors dependent on the health of aquatic and coastal resources would benefit from overall healthier ecosystems with fewer invasive species'' in chapter 4 was misleading because a BWDS will not result in fewer existing invasive NIS, but fewer introductions in the future. The Coast Guard agrees with this comment and changed the sentence in the FPEIS to clarify that there will be fewer introductions and spreading of NIS in comparison to a scenario without a BWDS.

One commenter stated that vessels may be able to meet the preferred alternative for organisms larger than 50 micrometers without BWE or treatment. The Coast Guard neither agrees nor disagrees with this statement, but notes that the BWDS is to be used for measuring the effectiveness of BWMS during the approval process in addition to measuring compliance from vessels at the point of discharge. It is not intended that vessels be allowed to assert their non-BWMS method of dealing with ballast water meets the BWDS.

One commenter stated that heterotrophic bacteria may also bloom within a ballast tank as a result of the increased substrate. The Coast Guard agrees with this comment, but saw no need to make changes to the FPEIS.

One commenter suggested that hull fouling is a larger factor than ballast water for NIS introductions from vessels. The Coast Guard acknowledges that biofouling is mentioned in the DPEIS, however, this comment is beyond the scope of this rule. We note that 33 CFR 151.2050 does include some provisions for preventing hull fouling.

One commenter stated that a cited author never intended to create a link between the economics of development of a BWDS and an increase in hull fouling. The Coast Guard has reviewed the use of this author's work and removed that text from the FPEIS.

One commenter noted that the threat of species introductions comes not only from foreign vessels, but also from vessels operating in the coastal waters of the United States. The Coast Guard agrees with this statement, and notes that the NPRM proposed requiring all vessels to comply with the BWDS. For reasons discussed elsewhere in this document, some of those requirements are being reevaluated. The PEIS does not intend to imply that NIS introductions come only from foreign vessels.

One commenter pointed out that the impacts of seawater should be considered regarding ballast water discharge. This comment is beyond the scope of this rule, which evaluates the impacts of NIS, but not the seawater in the discharge.

One commenter observed that the analyses of BWDS efficacy relative to BWE fails to account for the differences in potential risk associated with species that are sourced from different biogeographical habitats. The Coast Guard disagrees with this comment. The impacts of NIS invasions necessarily evaluate species that are transferred from one biogeographical area to a different one, and the effects, including risk, are described in the DPEIS.

One commenter stated that the Coast Guard should fully consider the economic input required for the alternatives. The Coast Guard agrees with this comment, and notes that the preferred alternative was developed taking into consideration environmental protection and practicability, including but not limited to economic and technical considerations.

One commenter stated that the evaluation of extinction probability applies only to individual ballast discharges from single ships without considering cumulative discharges from multiple ships, which could substantially increase the initial population of released organisms. The Coast Guard acknowledges that the PVA diffusion model provided a generic, non species-specific model that we used, in conjunction with other information, to provide insight into the potential relative impacts of the alternatives, i.e., the focus was on relative comparison of alternatives in terms of probability of NIS establishment. Cumulative impacts at the macro level are addressed in the FPEIS.

One commenter suggested that the Coast Guard insert the phrase ''with the implementation of a federal BWDS'' into page 4–23, line 34, of the DPEIS, where it states, ''Thus, if the volume of shipping remains at the same level, ballast-mediated invasions are likely to be reduced.'' The Coast Guard disagrees with this comment. The sentence in the Cumulative Impacts section that the commenter referred to, as well as the following sentence, set the context for the last sentence in that paragraph, ''Thus, a BWDS would be expected to decrease NIS introductions from distinct [ballast water] discharge events, but the total number of introductions could still increase due to increases in global trade.'' The commenter's suggested change would alter the intended meaning.

One commenter noted that if alternatives 2 through 4 can provide minor to major reductions, then alternative 5 should provide at least moderate to major reductions. The Coast Guard agrees with this comment. The DPEIS states that the impacts of NIS on the environment under alternative 5 would likely be greatly reduced compared to the other alternatives.

One commenter stated that there was vague language in specific sentences in the section on impacts of alternatives on listed species and habitat and in the cumulative impacts section of the Environmental Consequences, chapter 4 of the DPEIS. The Coast Guard reviewed and corrected the cited sentences and made changes in the FPEIS, as appropriate.

One commenter observed that the 8 percent reduction of NIS between 10 and 50 micrometers noted in the preferred alternative was not worthwhile given the effort. The Coast Guard disagrees with this comment. The preferred alternative was developed taking into consideration environmental protection and practicability, including economic and technical aspects.

One commenter stated that the Coast Guard must send a consistency determination to the State of New York. The Coast Guard agrees with this comment. We submitted Initial Coastal Zone Management Consistency determinations to the 34 coastal states and territories, including New York, in March 2010.

One commenter noted that the DPEIS failed to account for the differences in potential risk associated with species that are sourced from, and discharged into, low salinity habitats. The commenter also stated that Washington and Oregon will require a higher BWDS.

The Coast Guard prepared a PEIS because a BWDS would impact a large geographic area and a wide variety of U.S. ecosystems. The PEIS does not

evaluate specific areas or ecosystems. Additionally, we note that the final rule does not preempt the States from setting more stringent standards.

Two commenters stated that the Coast Guard's own modeling in the NPRM and associated DPEIS shows that only the degree of NIS infestation of the Great Lakes from ballast water discharge changes with the various scenarios of implementation dates for the phased BWDS. The Coast Guard acknowledges this comment, but does not feel that any action is necessary.

One commenter stated that the Coast Guard should perform additional scientific research to assess the effectiveness of current BWM efforts for coastal waters. The Coast Guard disagrees. The DPEIS sufficiently analyzed this issue for purposes of the rule.

One commenter stated that the Coast Guard did not discuss details of enforcement or compare the enforceability of different alternatives in the DPEIS. The Coast Guard does not believe that the PEIS is the appropriate place to discuss enforcement details.

One commenter stated that the Coast Guard should conduct a phase-one practicability review of the technical and economic barriers related to implementation of a BWDS for vessels operating primarily in the Great Lakes and St. Lawrence Seaway system. Another commenter stated that the precise risk of NIS introductions by domestic commercial vessels, particularly the domestic Great Lakes trade, requires further research. The commenter said that, therefore, application of the proposed rule to the ships in the domestic Great Lakes trade is inappropriate.

The Coast Guard agrees with the intent of these comments. We note that, in general, a phase-one practicability review is effectively taking place through the type approval of systems to meet the IMO discharge standard, which is indicative of BWMS being available. However, as discussed in this preamble in V.A. Summary of Changes from the NPRM, we have revised the applicability in this final rule such that non-seagoing vessels; vessels that take on and discharge ballast exclusively in one COTP Zone; and seagoing vessels that operate in more than one COTP Zone and do not operate outside of the Exclusive Economic Zone (EEZ), and are less than or equal to 1,600 gross register tons or less than or equal to 3,000 gross tons (International Convention on Tonnage Measurement of Ships, 1969) will not need to comply with the BWDS at this time. We are continuing to analyze the practicability of implementing any BWDS to these vessels. We also intend to conduct additional research, as necessary. The results of which will be included in a notice or other rulemaking document.

Miscellaneous Comments on the DPEIS

Six commenters pointed out that the DPEIS contains no evidence to suggest that ballast water discharged by towing vessels and barges operating only on the U.S. inland waterways has resulted in or contributed to the introduction or spread of NIS. Five of these commenters further stated that the same comment also applies to towing vessels and barges operating within the same coastal ecosystem, and that they are not aware of a Coast Guard effort to analyze NBIC data to determine the role of vessels, particularly domestic towing vessels, in the introduction and spread of invasive NIS.

An additional commenter pointed out that there is no evidence of NIS introduction or spread by towing vessels and barges operating primarily in U.S. coastal zones. Two commenters stated that it is unfair to regulate domestic towing vessels and barges with much smaller ballast water capacity than crude oil tankers in the U.S. coastwise trade which NISA exempts from BWM requirements.

One commenter stated that requiring the installation of very expensive BWMS on thousands of towing vessels and barges with very limited ballast water capacity is cost-prohibitive or not cost-effective. The commenter argued that costs must be considered both in absolute terms and against lack of evidence that towing vessels or barges operating primarily in U.S. coastal zones have contributed to the introduction or spread of invasive species, their smaller volumes of ballast water, and technological and operational impediments to the installation of BWMS.

These comments are not directly relevant to the DPEIS; they are instead comments on the NPRM itself. The Coast Guard has addressed the issue of applicability to towing vessels in our responses in this preamble in V.B.1 Discussion of Comments: Applicability.

One commenter recommended a study of species-by-species NIS risk analysis on the Great Lakes to focus the need for regulatory efforts on specific routes, where reducing the risk of species transfer would have the greatest benefit. The Coast Guard disagrees with this recommendation. It would not be practicable to develop risk profiles of specific routes, because risk profiles change as functions of the environmental characteristics of the locations, the traffic between them, and the introduction of new species by vessels and multiple non-ship vectors.

One commenter stated that onshore ballast water treatment facility options must be examined by the Coast Guard in the PEIS since there are proven, technically-feasible onshore treatment solutions for vessels with dedicated trade routes. They suggested that the Valdez Marine Terminal could be retrofitted with NIS control to treat crude oil vessels engaged in foreign trade regulated under the proposed rule and crude oil vessels engaged in coastwise trade regulated under the Clean Water Act.

The Coast Guard disagrees with this comment. The scope of the PEIS encompasses the standard for discharges from vessels, not an analysis of the means to achieve the standard. While discharge to shore is an option for vessels under the NPRM, provided there are facilities available, it is beyond the Coast Guard's authority to require shoreside facilities in all ports. NANPCA, as amended by NISA, grants Coast Guard the authority to regulate vessel BWM practices, and this authority does not extend to onshore ballast water treatment facilities. 16 U.S.C 4711. Ballast water discharged to a shore-side facility is not subject to the Coast Guard's proposed BWDS as it would not be a discharge into waters of the United States from a vessel. Discharges to waters of the United States from such shoreside treatment facilities would be subject to regulation under the CWA NPDES permit program.

One commenter stated that the proposed phase-one standard is biologically inadequate and inconsistent with the United States' initial position in discussions during the development of the IMO discharge standard. This initial U.S. position was for a more stringent standard (less than 0.01 per m^3 of water as the concentration standard for Zooplankton and less than 0.01 per mL for smaller organisms).

The Coast Guard disagrees that the phase-one standard is ''biologically inadequate''. As described in the DPEIS, the standard will be more effective than BWE. The initial U.S. negotiating position on the IMO ballast water discharge standard in 2004 is beyond the scope of this rulemaking; however, as stated in section V.A.1 of the preamble, it is our intention to work toward a more stringent standard.

One commenter stated that information about the resulting damages avoided by implementing alternatives 3 through 5 needs to be presented in the DPEIS on page H–10, paragraph 3, so that all alternatives can be compared on

equal footing. The NPRM RA (available on the docket for this rule) presents the total potential benefit from different proposed BWDS alternatives in chapter 5 (table 5.12). The values presented in this table enable the comparison of the benefits of alternatives 2, 3, and 4.

One commenter stated that the production and retrofitting of any heavy equipment onboard the world fleet would add not only cost, but also additional energy requirements and emissions. One commenter stated that in addition to the economic burden imposed by the additional power and gear requirements to operate BWMS, there will also be an associated increase in air pollutants and greenhouse gas emissions from additional fuel combustion.

We expect that our environmental analysis of individual BWMS, as part of the approval process, would indicate whether that specific BWMS might increase vessel energy requirements and emissions, which would be taken into consideration before U.S. type approval is granted.

One commenter stated that the DPEIS fails to provide a set of criteria or rubric for how the Coast Guard compared each of the alternatives in order to arrive at alternative 2 as the preferred alternative. The commenter also stated that there is a lack of references for key facts and insufficient cost data to support the argument that alternatives 3 and 4 are prohibitively expensive.

The Coast Guard acknowledges the comment that the analyses included in the DPEIS (and NPRM) did not present a detailed cost analysis of more stringent BWDS. There are very limited cost data available for technologies that would meet more stringent standards. The Coast Guard used the best information available at the time of the analysis to evaluate alternatives 3 and 4. Therefore, we have determined that additional analysis is needed, and have already begun its development. As noted in this preamble in V.A. Summary of Changes from the NPRM, as we complete this work, the Coast Guard has decided to move forward with the proposed phase-one standard (or alternative 2) with this final rule, which does not include a more stringent BWDS.

One commenter asked whether the costs that appear in Appendix H of the DPEIS are based on installation of treatment systems on U.S.-flagged vessels only or if it includes all vessels that will be discharging in the waters of the United States. The costs of installation that the Coast Guard presented in Appendix H—table H–3, ''Costs to the U.S. vessels to comply with IMO BWM Convention (Alternative 2) BWD Standard ($Mil)''—are for U.S. vessels only. Appendix C of the NPRM RA (available in the docket), presents cost estimates for the foreign-flagged vessels.

One commenter stated that the argument that capital and operation costs will double and quadruple for alternative 3 and alternative 4, respectively, is not accurate based on data presented in Lloyd's Register (2008) and Dobroski et al. (2009). A second commenter requested that the Coast Guard provide some basis for why it believes that the costs for alternative 3 would double those of alternative 2 and that the costs for alternative 4 would quadruple those for alternative 2. This commenter echoed the belief that cost data presented in recent reports by Lloyd's Register (2008) and the CSLC (Dobroski et al. 2009) do not agree with Coast Guard estimates. The commenter added that up-to-date facts and figures are needed to clearly demonstrate that such an increase in costs will be observed in the event that these alternatives are implemented.

As the Coast Guard noted previously in our discussion of the comments received on the NPRM RA, cost estimates presented in Lloyd's Report and in the CLSC ''Assessment of Efficacy, Availability and Environmental Impacts of Ballast Water Treatment Systems for Use in California Waters'' (Dobroski, Scianni, Gehringer and Falkner, 2009) are related to systems that meet the current IMO discharge standard only and are consistent with the Coast Guard's cost estimates ($258,000 to $2,525,000) and the Congressional Budget Office ($300,000 to $1,000,000).

Nevertheless, the Coast Guard acknowledges that the NPRM, DPEIS, and the NPRM RA did not present a detailed cost analysis of more stringent standards. There are very limited cost data available for technologies that would meet more stringent standards. Therefore, the Coast Guard has determined that additional analysis is needed, and has already begun its development. Noted in preamble section V.A. Summary of Changes from the NPRM, as we complete this work, the Coast Guard has decided to move forward with the proposed phase-one standard (or alternative 2) with this final rule, which does not include a more stringent standard.

One commenter requested that sources and dates be provided for the cost estimate data for installation and operation of the BWMS. One commenter requested the Coast Guard provide a source for the estimate that BWMS cost two to four times the cost of using mid-ocean BWE.

In Chapter 3 of the NPRM RA (available on the docket), the Coast Guard presented the data sources and timeframe used for the cost data. In Chapter 1 of the NPRM RA, the Coast Guard also mentioned the timeframe used for the estimates. The Coast Guard's cost estimates in the NPRM and DPEIS relied on manufacturer-provided data. Manufacturers supplied costs for equipment and installation. Data collection started in 2005/2006 and costs were updated in 2007/2008.

The Coast Guard's estimates are consistent with other notable cost estimates such as those made by Lloyds' Register (2008) ($145,000 to $2,000,000) and the Congressional Budget Office ($300,000 to $1,000,000). The Coast Guard is continuously monitoring BWMS technologies for new developments and changes in costs.

Section 6.3 and Appendix B of the NPRM RA provided a comparison of BWDS and BWE. The BWE cost was based on the framework used in the 2004 BWM RA adjusted for recently collected NBIC data. We did not find the BWMS cost to be two to four times the cost of using mid-ocean BWE. We estimated the annualized costs for BWE to be less than .01 percent of the annualized costs of the phase-one standard.

One commenter asked whether the conclusions presented in page H–7, paragraph 1 of the DPEIS still hold, given the recent economic downturn, and if there is any evidence to show that costs won't be passed on to consumers.

The Coast Guard did not analyze the impact of the recent economic downturn and the potential impact on the consumers. We did include a discussion on the uncertainties related to the cost estimates (NPRM RA, section 3.6) and compared the costs of implementing Alternative 2 for BWDS (the alternative proposed in the NPRM) to shipping revenues and consumer retail prices for goods typically transported by vessels. We compared amortized installation costs to long-term charter rates (NPRM RA, section 4.5). The NPRM costs typically represent less than one percent of charter rates suggesting reduced impact on consumers. Costs to the consumer are further reduced because maritime transportation costs generally represent only one to two percent of the retail cost of goods.

One commenter stated that the calculations to determine the number of invasions and amount of economic damage that would be reduced seem excessively convoluted and

inappropriate. The commenter also stated that the shipping-based invasion rates of invertebrates are projected into the future and are used to estimate the number of plant and fish invasions based on historical relationships between the three groups (even though there is no mention whether the relationships used take into account that the shipping-based invertebrate invasions are only a portion of the overall invertebrate invasions). The commenter added that these values are then adjusted back to account for only those invasions that are attributable to ballast water (even though this type of data involve a great deal of uncertainty, *see* Fofonoff et al., 2003) and that these values are then adjusted again to account for those invasions that cause economic harm.

The Coast Guard acknowledges that the calculations to determine the number of invasions and economic damage that could be reduced by the proposed BWMS are complicated and subject to uncertainty. However, the Coast Guard believes that each of the steps is appropriate and necessary in order to narrow the number of invasions considered to only those that could be reduced specifically by BWMS. In addition, as these calculations were used to develop monetized estimates of benefits, we also needed to limit the analysis to those invasions that cause economic harm.

One commenter asked what damages are likely to result from the implementation of alternatives 3 through 5. In the NPRM RA (available on the docket), chapter 5 (table 5.12), the Coast Guard presents the total potential benefit from different proposed BWDS alternatives. The values presented in this table enable the comparison of the benefits of alternatives 2, 3, and 4. As stated in the DPEIS, it is assumed that the implementation of alternatives 2 through 5 would not have additional adverse impacts on environmental and socioeconomic resources. Based on this assumption, the alternatives considered in the DPEIS differ only in their potential to reduce the probability of NIS threatening the ecological stability of infested waters or other resources dependent on such waters. The impact of implementing the BWDS defined under each alternative is determined by the respective reduction in the number of living organisms that are introduced.

One commenter stated their concern about the completeness and accuracy of the information used in the DPEIS. The commenter added that the economic and environmental benefits of effective controls on ballast water discharge are grossly underestimated in chapters 3 and 4 of the DPEIS. The commenter recommended that, if it is determined that additional work on the cost/benefit analysis is warranted, the Coast Guard should work closely with the States to gather the latest economic information on the actual and potential impacts NIS have on our water resources.

The Coast Guard used the best data available at the time of the research; we reviewed peer-reviewed papers on invasion-related costs and benefits. These papers included some local (regional) data as well as national. The Coast Guard will continue to monitor peer-reviewed literature to incorporate new studies and estimates as they become available.

One commenter stated that it was unclear in the DPEIS whether the cost associated with failure to achieve the objectives (e.g., habitat loss or modification, lost productivity of commercially viable native species, lost value of existing mitigation/restoration actions) was addressed for each of the alternatives. The commenter further states that the true cost of implementing an alternative should include the cost to the environment associated with NIS introductions under that alternative.

The Coast Guard acknowledges that some environmental costs of invasions cannot be easily monetized. The Coast Guard used the best data available at the time of the research; we reviewed peer reviewed papers on invasion-related costs and benefits. In addition to the DPEIS, chapter 5 of the NPRM RA presents an estimate of the value of the economic harm caused by invasive NIS. We calculated these values in order to estimate the range of monetary benefits from the proposed rule to compare against cost estimates.

One commenter stated that the benefits presented for alternative 2 should also be presented for alternatives 3 through 5. In the NPRM RA (available on the docket), chapter 5 (table 5.12), the Coast Guard presents the total potential benefits from different proposed alternatives. The values presented in this table enable the comparison of the benefits of alternatives 2, 3, and 4. In addition, the Coast Guard is now further investigating costs and benefits of more stringent standards.

One commenter requested that the 3 and 7 percent discount rates be explained in the DPEIS, as they are not commonly understood by individuals outside of finance. The Coast Guard followed the guidelines from OMB Circular A–4, which provides guidance to Federal agencies on the development of regulatory analysis as required under paragraph 6(a)(3)(c) of Executive Order 12866, ''Regulatory Planning and Review,'' also the Regulatory Right-to-Know Act, and a variety of related authorities. According to OMB Circular A–4 (page 34), the RA should provide costs and benefits estimates using both 3 and 7 percent discount rates. For more detailed explanation on the use of discount rates for regulatory analysis see OMB Circular A–4, pages 31 to 34.

One commenter stated that the proposed rule and the DPEIS are deficient in providing accurate costs, and thus justification on a cost/benefit basis for implementation of the rule as proposed. The commenter also states that NPRM provides much information relative to the compliance costs for U.S.-flagged vessels but little more than a passing comment on compliance costs for foreign-flagged vessels (74 FR 22643).

The Coast Guard estimated cost impacts for foreign-flagged vessels in the NPRM RA (see Appendix C) and the final rule RA (see Appendix D). As previously discussed, we have also made the phase-one standard as consistent as possible with the IMO BWM Convention's discharge standard. We assume foreign government administrations that adopt the IMO BWM Convention and the foreign-flagged vessels they administer to be responsible for the implementation and compliance with the IMO BWM Convention once it comes into force. We assume these foreign government administrations and the foreign-flagged vessels they administer to be responsible for the costs associated with the implementation and compliance of the IMO BWM Convention. Therefore, in the analyses of the NPRM and this final rule, our primary cost estimate of the phase-one standard rule includes costs to U.S. flagged-vessels only. This is similar to Coast Guard's assessment of impacts from regulations related to other international conventions, which take into account the costs incurred by U.S. vessels and owners and operators only (e.g., regulations related to The Standards of Training, Certification & Watchkeeping Convention (STCW) and regulations related to the International Convention for the Prevention of Pollution From Ships (MARPOL)).

Nonetheless, the Coast Guard estimated the foreign vessel costs of this rule in order to illustrate the potential economic impact to foreign-flagged vessel owners operating in the waters of the United States. The detailed description of the economic impact on foreign vessels is presented in the NPRM RA (Appendix C), available on the docket.

One commenter suggested adding a column to the DPEIS' ''Estimated Number of Ballast Water Invasions that Cause Harm'' table for diseases, viruses, etc., and an ''Other'' column for fish, plants, and invertebrates. The commenter cited VHS in particular, stating that while it is uncertain that ballast water was the mechanism for introduction of VHS, it is the likely cause, and that State and Federal agency costs to address VHS infection will continue to rise as the disease spreads throughout the Great Lakes and inland waters. The Coast Guard disagrees with this comment and believes there is sufficient information in the FPEIS as it stands.

One commenter stated that while the proposed rule uses the words ''introduction'' and ''spread'' in relation to ballast water, the solution makes no distinction between these vastly different issues. The commenter said that the DPEIS fails to calculate the costs and benefits of BWMS regarding the introduction to or spread within an ecosystem separately which the commenter believes is counter to the conclusions of the Great Lakes Regional Collaboration that the most appropriate response to NIS was to require BWMS on ocean-going vessels and Best Management Practices on Great Lakes vessels. The Coast Guard disagrees with this comment, as we believe the BWDS must be used to combat both the introduction and spread of NIS in waters of the United States.

Modal Shift Comments on the DPEIS

Two commenters stated that it is important to consider the potentially devastating environmental impacts of a large-scale modal shift in their region, which already has a high volume of truck traffic to facilitate border trade and the North American Free Trade Agreement corridor. Another commenter raised the possibility that the cost of retrofitting vessels for BWMS could result in a modal shift of cargoes to surface transportation, resulting in the ''unintended consequences'' of less carbon-efficient transportation, increased air emissions, more severely crowded roadways and increased infrastructure costs.

As previously discussed in the NPRM RA, we compared the costs of implementing the BWDS to shipping revenues and consumer retail prices for good typically transported by vessels. We have also compared amortized installation costs to long-term charter rates. These costs typically represent less than one percent of long-term charter rates. Although the overall cost of implementing this rule is significant, the cost will have minimal impact on the costs of goods and services. In addition, there are only a few substitutes for the maritime transportation of goods from overseas and producers. The Coast Guard did not find information or data indicating that there will be large modal shifts.

Phase-Two Comments

Twenty commenters addressed the phase-two standard in one way or another. Additionally, nine commenters stated that the NPRM and DPEIS do not evaluate the phase-two standard and that they are incomplete without an assessment of the environmental impacts of this standard. One of these commenters also stated that the DPEIS should clarify that alternative 5 (elimination of all living organisms larger than 0.1 micrometer) does not correspond to the proposed phase-two standard.

As we discussed in this preamble in V.A. Summary of Changes from the NPRM, the Coast Guard has removed the proposed phase-two standard from this final rule. However, after additional analysis and research we intend to issue a rule addressing the proposed phase-two standard or any standard higher than phase-one, and will keep these comments in mind as we develop that rule.

One commenter recommended that the standard 1,000 times more stringent than phase one be included in the PEIS, as well as a zero-discharge alternative that also restricts ocean vessel access to the Great Lakes. The Coast Guard partly agrees with this comment. We acknowledge that the PEIS must include the proposed phase-two standard. We have already begun this process, and expect to issue a revised PEIS when we address the proposed phase-two standard or any standard higher than phase-one. However, the PEIS evaluates a BWDS that applies to the entire United States, and not by individual geographic areas.

8. Beyond the Scope

We received many comments that were beyond the scope of this rule. Below, we summarize these comments, and respond to those that though beyond the scope, do have some relevance to this rule.

Two commenters encouraged the United States to ratify the IMO BWM Convention. One commenter recommended conducting a multinational risk assessment of vessel-mediated invasions of Arctic areas. One commenter suggested methods of funding the eradication of existing aquatic nuisance species. Another commenter expressed concerns about the Coast Guard directing sufficient funding to the implementation of the regulations. One commenter recommended that the Coast Guard revise 33 CFR 151.2050(c) to more accurately reflect when local, State, or Federal regulations apply to sediment disposal, such as under controlled arrangements at port or drydock. These comments are beyond the scope of this rule.

One commenter suggested the Coast Guard enter into a Memorandum of Understanding with the Department of the Interior to address invasive species concerns.

The Coast Guard strives to work closely and collaboratively with all Federal agencies on matters of mutual interest. More formal arrangements will be pursued when necessary.

One commenter recommended that STEP permit the enrollment of vessel fleets as an incentive for participation. Another commenter recommended providing incentives to companies that could lead to the development of freshwater BWDS.

The STEP processes and development of ballast water treatment technologies are beyond the scope of this rule. The comments will be forwarded to the STEP managers and appropriate Coast Guard office for consideration.

One commenter questioned whether treated ballast water would be subject to the EPA VGP or be considered an industrial discharge and therefore require a separate NPDES permit.

We consulted EPA and confirmed that ballast water treated and discharged in waters of the United States, as that term is defined in the Clean Water Act, by a vessel under this regulation would be subject to the EPA VGP.

One commenter stated that a rapid response program to mitigate infestations of invasive NIS should be a guiding principle of the regulations.

Rapid response to invasions is beyond the scope of the rule, which focuses on preventing the introduction of new invasions. However, as a member of the Aquatic Nuisance Species Task Force, the Coast Guard works with other Federal and State agencies to improve the nation's invasive species response capabilities.

Fifty-four commenters urged the Coast Guard to work closely with the EPA, the States, Canada and the IMO in developing a coordinated Federal ballast water program. One commenter urged the administration to consider NISA as the sole standard for ballast water discharge by ocean-going vessels. Conversely, one commenter asked that

ballast water regulation of vessels in the offshore energy services be left to States.

These comments are beyond the scope of this rule, however, we note that we have worked and will continue to work closely with Federal, international, and State partners to develop a consistent, coordinated ballast water program.

Four commenters provided suggestions on implementation and enforcement of the BWM program and information sharing among governmental agencies and the public.

While they did not address any proposals from the NPRM, these comments had merit and will be kept in mind as the Coast Guard continues to refine its BWM program.

Seven commenters urged the removal of the exemption for crude oil tankers engaged in coastwise trade under NISA.

While we appreciate the commenters' intent, the Coast Guard lacks the authority for the requested action, therefore this request is outside of the scope of this rule. 16 U.S.C. 4711(c)(2)(L). However, crude oil tankers engaged in coastwise trade will be subject to all other applicable U.S. laws, such as the CWA, which does not contain an exemption.

VI. Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 162.060–5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in 46 CFR 162.060–5.

VII. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

This final rule is an economically significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. OMB has reviewed it under those Orders. It requires an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. We have revised the estimates from the NPRM Preliminary Regulatory Analysis (''NPRM RA'') to reflect the changes described in this preamble under V. Discussion of Comments and Changes. A final rule Regulatory Analysis (''Final Rule RA'') with revised impact estimates of the phase-one BWDS is available in the docket as indicated under **ADDRESSES**. A summary of the findings follows.

The final rule RA provides an evaluation of the economic impacts associated with this final rule, which is the implementation of the phase-one BWDS.

Table 1 provides a comparison of regulatory impacts resulting from changes between the NPRM and the final rule.

TABLE 1—COMPARISON OF REGULATORY IMPACTS RESULTING FROM CHANGES BETWEEN THE NPRM AND FINAL RULE

Category	NPRM	Final rule
Applicability	All vessels discharging ballast water into U.S. waters.	Oceangoing vessels and some coastwise vessels (>1,600 GT) discharging ballast water in U.S. waters.
Compliance Start Date	Beginning 2012	Revised, beginning 2013.
Number of BWMS Installations on Vessels (10-year period of analysis).	4,758	3,046.
Costs ($ millions,7 percent discount rate)	$167 (annualized) $1,176 (10-year).	$92 (annualized). $649 (10-year).
Benefits ($ millions,7 percent discount rate)	$165–$282 (annualized) $1,161–$1,977 (10-year).	$141–$240 (annualized) $989–$1,684 (10-year).

Note: The Regulatory Analysis in the docket for this rulemaking presents additional discussion of calculations and ranges for costs and benefits.

Based on data from the Marine Information for Safety and Law Enforcement system and the NBIC, we estimate that approximately 3,046 existing and new U.S. vessels will potentially be required to install and operate approved BWMS over a 10-year period of analysis.[6] As originally discussed in the NPRM, we consider the phase-one BWDS regulatory costs of this rule to involve U.S. vessels, as foreign-flagged vessels are expected to comply pursuant to the IMO BWM Convention, which is the phase-one BWDS.[7]

Costs

The primary cost drivers of this rule are installation related costs. We estimate operation and maintenance costs to be substantially less. Costs vary by year based on the implementation schedule of this rule. Over a 10-year period of analysis, the total discounted present value cost for U.S. vessels is approximately $649 million at a 7 percent discount rate (rounded primary estimate).[8] We estimate the annualized cost over the same period of analysis to be about $92 million at a 7 percent discount rate. Our cost assessment includes existing and new vessels.

Benefits

NIS introductions contribute to the loss of marine biodiversity and have significant social, economic, and environmental impacts. Avoided costs associated with future initial NIS invasions and secondary spread of invasions (which may result from the initial invasion) represent the primary benefits of BWM. Economic costs (damages) from invasions of NIS range in the billions of dollars annually. The most extensive review to date on the economic costs of introduced species in the United States includes estimates for many types of NIS and is summarized in Table 2.

[6] This 10-year period of analysis was used to estimate costs and benefits in the NPRM. *See* the NPRM RA and the final rule RA for additional discussion and detail on costs and benefits over various periods of time.

[7] Foreign government administrations signing on to the IMO Convention and the foreign-flagged vessels they administer will be responsible for compliance with the IMO Convention once it comes into force. The final rule RA presents supplemental cost estimates for foreign-flagged vessels projected to call in waters of the United States.

[8] Cost and benefit estimates discussed in this final rule are based on a 7 percent discount rate. *See* the final rule RA in the docket for additional discussion and estimates using other discount rates.

TABLE 2—ESTIMATED ANNUAL COSTS ASSOCIATED WITH AQUATIC NIS INTRODUCTION IN THE UNITED STATES

[$ in 2007]

Species	Costs
Fish	$5.7 billion.
Zebra and Quagga Mussels	$1.06 billion.
Asiatic Clam	$1.06 billion.
Aquatic Weeds	$117 million.
Green Crab	$47 million.

Source: Pimentel, D. *et al.,* 2005. ''Update on the environmental and economic costs associated with alien-invasive species in the United States,'' *Ecological Economics.* 52:273–288.

Though a particular invasion may have small direct economic impacts, the accumulation of these events may cost in the billions of dollars every year. Only a few invasions to date have led to quantified cost estimates in the billions of dollars per year.

The benefits of BWDS are difficult to quantify because of the complexity of ecosystems and a lack of information to estimate the probabilities of invasions based on prescribed levels of organisms in ballast water. However, evaluation of costs associated with previous invasions (described previously) allows a comparison of the costs of BWDS versus the costs of avoided damages.

The primary benefit of this rule comes from a reduction in the concentration of all organisms, leading to lower numbers of these organisms being introduced per discharge. This further reduces the number of new invasions because the likelihood of establishment decreases with reduced numbers of organisms introduced per discharge.

The quantified benefits have decreased between the NPRM and the final rule due to the longer phase-in period (see Table 1 this section). We use the same benefits model for the final rule as we did for the NPRM. This model quantifies benefits resulting from the reduction in ''initial invasions'' from vessels engaged in ocean-going trade. We have not found complete data or identified appropriate models to quantify the possible benefits associated with reducing the secondary spread of invasions. Therefore, we do not expect the exemption of inland vessels to reduce the estimate of quantified benefits given data and modeling limitations. See the Benefits chapter of the final rule RA for more discussion on the data and modeling framework used for this rulemaking.

We calculate potential benefits of the phase-one BWDS by estimating the number of initial invasions reduced and the range of economic damage avoided. The FPEIS estimates the reduction in the mean rate of successful introductions for the phase-one standard. In comparison with the existing practice of BWE, the proposed phase-one BWDS is between 37 percent and 63 percent more effective in preventing invasions when fully implemented (*see* the FPEIS for further details on effectiveness). We use these estimates of the reduction in the rate of invasions to estimate the economic costs avoided (or benefits) as a result of a BWDS.

Over a 10-year period of analysis, we estimate the total discounted present value benefits of the phase-one BWDS to be $0.989 billion to $1.684 billion (rounded primary estimate).[9] We estimate the annualized benefits over the same period of analysis to be $141 million to $240 million per year.

As previously discussed, the annualized cost for domestic vessels over the period of analysis for the phase-one BWDS is estimated at about $92 million. Thus, quantified average benefits exceed quantified average costs for the phase-one BWDS. We also expect quantified benefits to increase as technology is developed to achieve more stringent discharge standards than the phase-one BWDS.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

A Final Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket where indicated under **ADDRESSES**.

Based on available data, we estimate that about 29 percent of entities affected by the final rule requirements are small under the Regulatory Flexibility Act and the SBA size standards (compared to the 57 percent of entities affected by the NPRM provisions). This is due to the changes in the applicability (detailed explanation of applicability changes on section V.B.3 of this final rule). Based on our assessment of the impacts from the phase-one BWDS, we determined that small entities would incur a significant economic impact (more than 1 percent impact on revenue) during installation. After installation, however, we found most small businesses would not incur a significant economic impact from annual recurring operating costs. We have determined that this final rule will have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email Mr. John Morris, Project Manager, U.S. Coast Guard, telephone 202–372–1433, email *John.C.Morris@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule calls for new collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. This new collection of information is due to the final rule provision that allows vessel owners and operators to request a compliance extension.

[9] Estimates discussed in this final rule are based on a 7 percent discount rate. *See* the final rule RA in the docket for additional discussion and estimates using other discount rates.

In the NPRM, we found that there was no new collection of information for BWMS approval. This finding was based on the fact that our research indicated that there are 25–30 manufacturers developing BWMS for installation onboard vessels.[10] We expect to receive less than 10 BWMS approval requests per year. This figure is less than the threshold of 10 per 12-month period for collection of information reporting purposes under the PRA of 1995.

The final rule's new collection of information is a result of public comments received in the NPRM. In this final rule, we have included a paperwork provision to allow vessel owners and operators to request an extension of their compliance date if they cannot practicably comply with the compliance date otherwise applicable to their vessel. This extension provision will give flexibility to vessel owners and operators to comply with this rule. Summary information concerning all extension decisions, including the name of the vessel and vessel owner, the term of the extension, and the basis for the extension will be promptly posted on the U.S. Coast Guard Maritime Information Exchange Web site (CGMIX), currently located at [*http://cgmix.uscg.mil/Default.aspx*].

The Coast Guard is amending the existing collection of information (OMB Control Number: 1625–0069) to add the above mentioned requests for extension.

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

Summary of the Collection of Information: The information is needed to carry out the requirements of 16 U.S.C. 4711 regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. Respondents are owners and operators of certain vessels. The Coast Guard is amending the existing collection of information to include application for extensions as established in this final rule (33 CFR 151.1513 or 151.2036).

Need for Information: The Coast Guard may grant an extension to the implementation schedule only in those cases where the master, owner, operator, agent, or person in charge of a vessel subject to this subpart can document that, despite all efforts, compliance with the requirements of this final rule is not possible, giving flexibility to vessel owners and operators to comply with this final rule.

Extension evaluations will be on a per-vessel basis. Summary information concerning all extension decisions, including the name of the vessel and vessel owner, the term of the extension, and the basis for the extension will be promptly posted on the Internet. Extensions will be for no longer than the minimum time needed, as determined by the Coast Guard, for the vessel to comply with the requirements of § 151.2030.

Any extension request must be made no later than 12 months before the scheduled implementation date listed in § 151.1512(b) of this subpart and submitted in writing to the Commandant (CG–522), U.S. Coast Guard Office of Operating and Environmental Standards, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126.

Proposed Use of Information: The Coast Guard will use the information provided in the extension request to evaluate whether to grant extension and for what period of time, and to keep records of vessels not meeting the established compliance date. The compliance extension provides additional time to determine how BWMS can be safely installed. An extension postpones installation costs for affected vessels.

Description of the Respondents: Vessel owners and operators subject to the requirements of this final rule (see section V.A.3. Applicability).

Number of Respondents: We do not have information on the potential number of vessel owners and operators that will take advantage of the compliance extension at this time. We estimate that between 10 and 30 percent of owners and operators of U.S. vessels affected by this final rule might request the extension based on preliminary information from industry, BWMS vendors and Coast Guard experts. We anticipate that extension requests will be based on issues related to safety and regulatory requirements of electrical equipment, vessel capacity to accommodate BWMS, vessel age, shipyard availability, and other reasons. At this time, we do not have the data to determine the potential number of requests for extension. We expect to obtain this information as we process the requests. We will revise this collection of information as we post the requests on the Web site or as needed.

We estimate that owners and operators of approximately 146 to 438 vessels (estimated total U.S. vessel affected by this rule is 1,459) might request compliance extensions for the reasons listed above. We estimate the total average number of vessels that will submit a request for extension to be 292.

Frequency of the Response: Vessel owners and operators will submit a compliance extension request once.

Burden of Response: We estimate that there could be an average of 292 existing vessels that could request an extension for installing a BWMS. The 292 is the total number of vessels estimated to request the extension. We estimate that the average time burden to prepare and submit a request is approximately 8 hours (6 hours management and 2 hours clerical)[11] but burden may vary depending on type of vessel and reason for the extension request. The total average burden hours of vessels requesting an extension is approximately 2,336 hours (292 vessels × 8 hours for completing and submitting the extension documentation). The total burden cost is $141,328, calculated by (a) + (b):

(a) Assuming someone at a management level (equivalent to GS–12 (out-of-government rate)) prepares the submission to the Coast Guard, the applicable wage rate is $69/hour.[12] Therefore, the total management cost for preparing the extension request is $69 × 6 hrs × 292 vessels = $120,888.

(b) Assuming someone at the clerical level (equivalent to GS–5 (out-of-government rate)) files the copies, then the applicable wage rate is $35/hour.[13] Therefore, the total management cost for preparing the extension request is $35 × 2hrs × 292 vessels = $20,440.

The estimated cost per vessel is $484 ($141,328/292 vessels). The final cost of the final rule does not change given the amount of this paperwork requirement.

Estimate of Total Annual Burden: At this time, we do not have information on how many vessel owners and operators will be requesting compliance extension per year. We expect to obtain this information as we process the requests. If we assume that 10 percent of the estimated owners of 292 vessels (see ''*Burden of Response,*'' above) will be applying to an extension every year, then the annual burden will be equal to approximately 234 hours (29.2 vessels × 8 hrs or 10 percent of 2,336 hours). The

[10] **Sources:** Lloyds Register Report, Ballast Water Treatment Technology-Current Status, September 2008; and California State Lands Commission Report, Assessment of the Efficacy, Availability, and Environmental Impacts of Ballast Water Treatment Systems in California Waters, January 2009.

[11] This estimate is based on an existing collection of information (OMB Control Number 1625–0095) for requests of exemption and alternatives for Oil and Hazardous Materials Pollution and Safety Records Equivalent.

[12] Wage rate obtained from Enclosure (2) to COMDTINST 7310.1M and validated based on the Bureau of Labor Statistics (BLS) subcategory Managers (Occupation Code 11–9199).

[13] Wage rate obtained from Enclosure (2) to COMDTINST 7310.1M and validated based on the Bureau of Labor Statistics (BLS) subcategory First-line Supervisor of office and Administrative Support Worker (Occupation Code 43–1011).

annual cost will be approximately $14,132 (10 percent of $141,328).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism. NANPCA, as amended by NISA, contains a ''savings provision'' that saves to the States their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any State over species of fish and wildlife.'' 16 U.S.C. 4725. It also requires that ''[a]ll actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction and spread of NIS into the waters of the United States from ships' ballast water. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, would occur.

We received a number of comments, from organizations, individuals, and States, on the issue of preemption. These comments are summarized and addressed in this preamble in V.B.6. Legal.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate or by the private sector, of $100,000,000 (adjusted for inflation with a base year of 1995) or more in any 1 year (2 U.S.C. 1532). The Coast Guard currently uses an inflation-adjusted value of about $140.8 million in lieu of $100 million.[14] The private sector will incur costs exceeding the $140.8 million threshold during the third and fourth years of the rule implementation period (see Regulatory Analysis in the docket for additional details).

In accordance with 2 U.S.C. 1532(a)(1), this rule generally would be promulgated under the authority of 46 U.S.C. Chapter 45 and also under the authority of the statutes, Executive Orders, and delegations cited in the ''Authority'' lines of the specific Code of Federal Regulations parts we propose to amend. We include the assessments and estimates that would be required by 2 U.S.C. 1532(a)(2) through (a)(4) in the Regulatory Analysis report available in the docket as indicated under the **ADDRESSES** section of this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

[14] The value equivalent to $100,000,000 in calendar year 1995 adjusted for inflation to calendar year 2009 is about $140,800,000 (rounded to the nearest 100,000) using the Consumer Price Index for All Urban Consumers (CPI–U) as published by the Bureau of Labor Statistics, series CUUR0000SA0, *http://www.bls.gov/data/top20.htm* (accessed 4/26/2010). Calendar year 2009 is the latest complete year for the annual CPI–U data series. This adjustment is based on recent Department of Transportation guidance on adjustments to the annual threshold (see *http://regs.dot.gov/*).

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. Though this rule is economically significant, it does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses a number of technical standards, all of which are voluntary consensus standards. These may be found in the technology approval program amendments to 46 CFR part 162 and are listed below.

The voluntary consensus standards used by this rule are:

(1) International Electrotechnical Commission (IEC), 529, Degrees of Protection Provided by Enclosures, 1989;

(2) International Organization for Standardization (ISO) and the IEC, ISO/IEC 17025, General Requirements for the Competence of Calibration and Testing Laboratories, 2005; and

(4) Environmental Protection Agency's Environmental Technology Verification (ETV) Program Generic Protocol for the Verification of Ballast Water Treatment Technologies.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with NEPA (42 U.S.C. 4321–4370f), and have concluded that this action may have a significant effect on the human environment. A Final Programmatic Environmental Impact Statement and Record of Decision are available in the docket where indicated under **ADDRESSES**, and include a summary of our actions to comply with NEPA.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Ballast water management, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 162

Ballast water management, Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 and 46 CFR part 162 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

Subchapter O—Pollution

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

■ 1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 151.1502 to read as follows:

§ 151.1502 Applicability.

This subpart applies to all non-recreational vessels, U.S. and foreign, that are equipped with ballast tanks that, after operating on the waters beyond the Exclusive Economic Zone during any part of its voyage, enter the Snell Lock at Massena, New York, or navigates north of the George Washington Bridge on the Hudson River, regardless of other port calls in the United States or Canada during that voyage, except as expressly provided in 33 CFR 151.2015(a). All vessels subject to this subpart are also required to comply with the applicable requirements of 33 CFR 151.2050, 151.2060, and 151.2070.

■ 3. In § 151.1504, add, in alphabetical order, definitions for the terms ''Alternate management system (AMS)'', ''Ballast water management system (BWMS)'', ''Constructed'', and ''Waters of the United States'' to read as follows:

§ 151.1504 Definitions.

* * * * *

Alternate management system (AMS) means a ballast water management system approved by a foreign administration pursuant to the standards set forth in the International Maritime Organization's International BWM Convention, and meeting all applicable requirements of U.S. law, and which is used in lieu of ballast water exchange.

* * * * *

Ballast water management system (BWMS) means any system which processes ballast water to kill, render harmless, or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

* * * * *

Constructed in respect to a vessel means a stage of construction when—

(1) The keel of a vessel is laid;

(2) Construction identifiable with the specific vessel begins;

(3) Assembly of the vessel has commenced and comprises at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less; or

(4) The vessel undergoes a major conversion.

* * * * *

Waters of the United States means waters subject to the jurisdiction of the United States as defined in 33 CFR 2.38, including the navigable waters of the United States. For 33 CFR part 151, subparts C and D, the navigable waters include the territorial sea as extended to 12 nautical miles from the baseline, pursuant to Presidential Proclamation No. 5928 of December 27, 1988.

* * * * *

■ 4. Add new § 151.1505 to read as follows:

§ 151.1505 Severability.

If a court finds any portion of this subpart to have been promulgated without proper authority, the remainder of this subpart will remain in full effect.

■ 5. In § 151.1510—

■ a. Revise the section heading; b. Revise paragraphs (a)(1) and (a)(3) and add new paragraph (a)(4); c. Add new paragraph (d).

The revisions and additions read as follows:

§ 151.1510 Ballast water management requirements.

(a) * * *

(1) Carry out an exchange of ballast water on the waters beyond the U.S. Exclusive Economic Zone (EEZ), from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand, unless the vessel is required to employ an approved ballast water management system (BWMS) per the schedule in § 151.1512(b) of this subpart. This exchange must occur prior to entry into the Snell Lock at Massena, NY, or navigating on the Hudson River, north of the George Washington Bridge. An alternative management system (AMS) that meets the requirements of 33 CFR 151.2026 may also be used, so long as it was installed on the vessel prior to the date that the vessel is required to comply with the ballast water discharge standard in accordance with § 151.1512(b) of this subpart. If using an AMS, the master, owner, operator, agent, or person in charge of the vessel subject to this subpart may employ the AMS for no longer than 5 years from the date they would otherwise be required to comply with the ballast water discharge standard in accordance with § 151.1512(b) of this subpart.

* * * * *

(3) Install and operate a BWMS that has been approved by the Coast Guard under 46 CFR part 162, in accordance with § 151.1512(b) of this subpart. Following installation of a BWMS, the master, owner, operator, agent, or person in charge of the vessel must maintain the BWMS in accordance with all manufacturer specifications.

(i) Requirements for approval of BWMS are found in 46 CFR part 162.060.

(ii) Requests for approval of BWMS must be submitted to the Commanding Officer (Marine Safety Center), U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102, or by email to *msc@uscg.mil*.

(4) Use only water from a U.S. public water system (PWS), as defined in 40 CFR 141.2 and that meets the requirements of 40 CFR parts 141 and 143, as ballast water. Vessels using water from a PWS as ballast must maintain a record of which PWS they received the water and a receipt, invoice, or other documentation from the PWS indicating that water came from that system. Furthermore, they must certify that they have met the conditions in paragraphs (a)(4)(i) or (ii) of this section, as applicable. Vessels using water from a PWS must use such water exclusively for all ballast water unless the usage is in accordance with § 151.1515 of this subpart. Vessels using PWS water as ballast must have either—

(i) Previously cleaned the ballast tanks (including removing all residual sediments) and not subsequently introduced ambient water; or

(ii) Never introduced ambient water to those tanks and supply lines.

* * * * *

(d) Unless otherwise expressly provided for in this subpart, the master, owner, operator, agent, or person in charge of vessels employing a Coast Guard-approved BWMS must meet the applicable ballast water discharge standard, found in § 151.1511 of this subpart, at all times of ballast water discharge into the waters of the United States.

■ 6. Add new § 151.1511 to read as follows:

§ 151.1511 Ballast water discharge standard (BWDS).

(a) Vessels employing a Coast Guard-approved ballast water management system (BWMS) must meet the following BWDS by the date in § 151.1512(b) of this subpart:

(1) For organisms greater than or equal to 50 micrometers in minimum dimension: discharge must include fewer than 10 living organisms per cubic meter of ballast water.

(2) For organisms less than 50 micrometers and greater than or equal to 10 micrometers: discharge must include fewer than 10 living organisms per milliliter (mL) of ballast water.

(3) Indicator microorganisms must not exceed:

(i) For Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): a concentration of less than 1 colony forming unit (cfu) per 100 mL.

(ii) For *Escherichia coli:* a concentration of fewer than 250 cfu per 100 mL.

(iii) For intestinal enterococci: a concentration of fewer than 100 cfu per 100 mL.

(b) [Reserved]

(c) The Coast Guard will conduct a practicability review as follows:

(1) No later than January 1, 2016, the Coast Guard will publish the results of a practicability review to determine—

(i) Whether technology to comply with a performance standard more stringent than that required by paragraph (a) of this section can be practicably implemented, in whole or in part, and, if so, the Coast Guard will schedule a rulemaking to implement the more stringent standard; *and*

(ii) Whether testing protocols that can accurately measure efficacy of treatment against a performance standard more stringent than that required by paragraph (a) of this section can be practicably implemented.

(2) If the Coast Guard determines on the basis of a practicability review conducted under paragraph (c)(1) of this section that technology to achieve a significant improvement in ballast water treatment efficacy could be practicably implemented, the Coast Guard will report this finding and will, no later than January 1, 2017, initiate a rulemaking that would establish performance standards and other requirements or conditions to ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels. If the Coast Guard subsequently finds that it is not able to meet this schedule, the Coast Guard will publish a notice in the **Federal Register** so informing the public, along with an explanation of the reason for the delay, and a revised schedule for rule making that shall be as expeditious as practicable.

(3) When conducting the practicability review as required by paragraph (c)(1) of this section, the Coast Guard will consider—

(i) The capability of any identified technology to achieve a more stringent ballast water discharge standard, in whole or in part;

(ii) The effectiveness of any identified technology in the shipboard environment;

(iii) The compatibility of any identified technology with vessel design and operation;

(iv) The safety of any identified technology;

(v) Whether the use of any identified technology may have an adverse impact on the environment;

(vi) The cost of any identified technology;

(vii) The economic impact of any identified technology, including the impact on shipping, small businesses, and other uses of the aquatic environment;

(viii) The availability, accuracy, precision, and cost of methods and technologies for measuring the concentrations of organisms, treatment chemicals, or other pertinent parameters in treated ballast water as would be required under any alternative discharge standards;

(ix) Any requirements for the management of ballast water included in the most current version of the U.S. Environmental Protection Agency's Vessel General Permit and any documentation available from the EPA regarding the basis for these requirements; and

(x) Any other factor that the Coast Guard considers appropriate that is related to the determination of whether identified technology is performable, practicable, and/or may possibly prevent the introduction and spread of non-indigenous aquatic invasive species.

§ 151.1512 and 151.1514 [Redesignated as §§ 151.1514 and 151.1515]

■ 7. Redesignate §§ 151.1512 and 151.1514 as §§ 151.1514 and 151.1515, respectively.

■ 8. Add a new § 151.1512 to read as follows:

§ 151.1512 Implementation schedule for approved ballast water management methods.

(a) In order to discharge ballast water into the waters of the United States, the master, owner, operator, agent, or person in charge of a vessel subject to § 151.1510 of this subpart must either ensure that the ballast water meets the ballast water discharge standard as defined in § 151.1511(a), use an AMS as provided for under § 151.1510(a)(1) or ballast exclusively with water from a U.S. public water system, as described in § 151.1510(a)(4), according to the schedule in paragraph (b) of this section.

(b) *Implementation Schedule for the Ballast Water Management Discharge Standard for vessels using a Coast Guard approved BWMS to manage ballast water discharged to U.S. waters.* After the dates listed in Table 151.1512(b), vessels may use a USCG-

approved BWMS and comply with the discharge standard, or employ an approved alternative ballast water management method per § 151.1510(a)(1) and (4).

TABLE 151.1512(b)—IMPLEMENTATION SCHEDULE FOR BALLAST WATER MANAGEMENT DISCHARGE STANDARDS FOR VESSELS USING COAST GUARD APPROVED BALLAST WATER MANAGEMENT SYSTEMS

	Vessel's ballast water capacity	Date constructed	Vessel's compliance date
New vessels	All	On or after December 1, 2013.	On delivery.
Existing vessels	Less than 1500 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2016.
	1500–5000 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2014.
	Greater than 5000 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2016.

■ 9. Add new § 151.1513 to read as follows:

§ 151.1513 Extension of Compliance Date.

The Coast Guard may grant an extension to the implementation schedule in § 151.1512(b) of this subpart only in those cases where the master, owner, operator, agent, or person in charge of a vessel subject to this subpart can document that, despite all efforts, compliance with the requirement under § 151.1510 is not possible. Any extension request must be made no later than 12 months before the scheduled implementation date listed in § 151.1512(b) of this subpart and submitted in writing to the Commandant (CG–522), U.S. Coast Guard Office of Operating and Environmental Standards, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126. Summary information concerning all extension decisions, including the name of the vessel and vessel owner, the term of the extension, and the basis for the extension will be promptly posted on the Internet. Extensions will be for no longer than the minimum time needed, as determined by the Coast Guard, for the vessel to comply with the requirements of § 151.1510.

■ 10. Revise newly redesignated § 151.1515 as follows:

§ 151.1515 Ballast water management alternatives under extraordinary conditions.

(a) As long as ballast water exchange (BWE) remains an option under the schedule in § 151.1512(b) of this subpart, the master of any vessel subject to this subpart who uses BWE to meet the requirements of this subpart and, due to weather, equipment failure, or other extraordinary conditions, is unable to effect a BWE before entering the U.S. Exclusive Economic Zone, and intends to discharge ballast water into the waters of the United States, must request permission from the Captain of the Port (COTP) to exchange the vessel's ballast water within an area agreed to by the COTP at the time of the request and then discharge the vessel's ballast water within that designated area.

(b) Once BWE is no longer an option under the schedule in § 151.1512(b) of this subpart, if the ballast water management system required by this subpart stops operating properly during a voyage or the vessel's BWM method is unexpectedly unavailable, the master, owner, operator, agent, or person in charge of the vessel must ensure that the problem is reported to the COTP as soon as practicable. The vessel may continue to the next port of call, subject to the directions of the COTP or the Ninth District Commander, as provided by 33 CFR part 160.

■ 11. Revise § 151.1516(a) to read as follows:

§ 151.1516 Compliance Monitoring.

(a) The master of each vessel equipped with ballast tanks must provide, as detailed in § 151.2070 of this part, the following information, in written form, to the Captain of the Port (COTP):

* * * * *

■ 12. Revise subpart D of part 151 to read as follows:

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

Sec.

151.2000 Purpose and scope.
151.2005 Definitions.
151.2010 Applicability.
151.2013 Severability.
151.2015 Exemptions.
151.2020 Vessels in innocent passage.
151.2025 Ballast water management requirements.
151.2026 Alternate management systems.
151.2030 Ballast water discharge standard (BWDS).
151.2035 Implementation schedule for approved ballast water management methods.
151.2036 Extension of compliance date.
151.2040 Discharge of ballast water in extraordinary circumstances.
151.2050 Additional requirements—nonindigenous species reduction practices.
151.2055 Deviation from planned voyage.
151.2060 Reporting requirements.
151.2065 Equivalent reporting methods for vessels other than those entering the Great Lakes or Hudson River after operating outside the U.S. Exclusive Economic Zone or Canadian equivalent.
151.2070 Recordkeeping requirements.
151.2075 Enforcement and compliance.
151.2080 Penalties.

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

§ 151.2000 Purpose and scope.

This subpart implements the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4751), as amended by the National Invasive Species Act of 1996.

§ 151.2005 Definitions.

(a) Unless otherwise stated in this section, the definitions in 33 CFR 151.1504, 33 CFR 160.204, and the United Nations Convention on the Law of the Sea apply to this subpart.

(b) As used in this subpart:

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a COTP Zone as described in part 3 of this chapter.

Constructed in respect of a vessel means a stage of construction when—

(1) The keel of a vessel is laid;

(2) Construction identifiable with the specific vessel begins;

(3) Assembly of the vessel has commenced and comprises at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less; or

(4) The vessel undergoes a major conversion.

Exchange means to replace the water in a ballast tank using one of the following methods:

(1) *Flow-through exchange* means to flush out ballast water by pumping in mid-ocean water at the bottom of the

tank and continuously overflowing the tank from the top until three full volumes of water has been changed to minimize the number of original organisms remaining in the tank.

(2) *Empty/refill exchange* means to pump out the ballast water taken on in ports, estuarine, or territorial waters until the pump(s) lose suction, then refilling it with mid-ocean water.

International Maritime Organization (IMO) ballast water management guidelines mean the Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens (IMO Resolution A.868 (20), adopted November 1997).

National Ballast Information Clearinghouse (NBIC) means the National Ballast Information Clearinghouse operated by the Coast Guard and the Smithsonian Environmental Research Center as mandated under the National Invasive Species Act of 1996.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

Seagoing vessel means a vessel in commercial service that operates beyond the boundary line established by 46 CFR part 7. It does not include a vessel that navigates exclusively on inland waters.

Shipboard Technology Evaluation Program (STEP) means a Coast Guard research program intended to facilitate research, development, and shipboard testing of effective BWMS. STEP requirements are located at: *http://www.uscg.mil/environmental_standards/.*

United States means the States, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

Voyage means any transit by a vessel destined for any United States port or place.

§ 151.2010 Applicability.

This subpart applies to all non-recreational vessels, U.S. and foreign, that are equipped with ballast tanks and operate in the waters of the United States, except as expressly provided in §§ 151.2015 or 151.2020 of this subpart.

§ 151.2013 Severability.

If a court finds any portion of this subpart to have been promulgated without proper authority, the remainder of this subpart will remain in full effect.

§ 151.2015 Exemptions.

(a) The following vessels are exempt from all of the requirements of this subpart:

(1) Any Department of Defense or Coast Guard vessel subject to the requirements of section 1103 of the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended by the National Invasive Species Act; or any vessel of the Armed Forces, as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)), that is subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' (33 U.S.C. 1322(n)).

(2) Any warship, naval auxiliary, or other vessel owned or operated by a foreign state and used, for the time being, only on government non-commercial service. However, such vessels should act in a manner consistent, so far as is reasonable and practicable, with this subpart.

(b) The following vessels are exempt from the requirements of §§ 151.2025 (ballast water management (BWM) requirements), 151.2060 (reporting), and 151.2070 (recordkeeping) of this subpart:

(1) Crude oil tankers engaged in coastwise trade.

(2) Vessels that operate exclusively within one Captain of the Port (COTP) Zone.

(c) The following vessels are exempt only from the requirements of § 151.2025 (BWM requirements) of this subpart:

(1) Seagoing vessels that operate in more than one COTP Zone, do not operate outside of the Exclusive Economic Zone (EEZ), and are less than or equal to 1,600 gross register tons or less than or equal to 3,000 gross tons (International Convention on Tonnage Measurement of Ships, 1969).

(2) Non-seagoing vessels.

(3) Vessels that take on and discharge ballast water exclusively in one COTP Zone.

§ 151.2020 Vessels in innocent passage.

A foreign vessel that is merely traversing the territorial sea of the United States (unless bound for, entering or departing a U.S. port or navigating the internal waters of the U.S.) does not fall within the applicability of this subpart.

§ 151.2025 Ballast water management requirements.

(a) The master, owner, operator, agent, or person in charge of a vessel equipped with ballast tanks that operates in the waters of the United States must employ one of the following ballast water management methods:

(1) Install and operate a ballast water management system (BWMS) that has been approved by the Coast Guard under 46 CFR part 162. The BWMS must be installed in accordance with § 151.2035(b) of this subpart. Following installation, the master, owner, operator, agent, or person in charge of the vessel subject to this subpart must properly maintain the BWMS in accordance with all manufacturer specifications. Unless otherwise expressly provided for in this subpart, the master, owner, operator, agent, or person in charge of vessels employing a Coast Guard-approved BWMS must meet the applicable ballast water discharge standard (BWDS), found in § 151.2030 of this subpart, at all times of discharge into the waters of the United States.

(2) Use only water from a U.S. public water system (PWS), as defined in 40 CFR 141.2, that meets the requirements of 40 CFR parts 141 and 143 as ballast water. Vessels using water from a PWS as ballast must maintain a record of which PWS they received the water from as well as a receipt, invoice, or other documentation from the PWS indicating that water came from that system. Furthermore, they must certify that they have met the conditions in paragraphs (a)(2)(i) or (ii) of this section, as applicable, and describe in the BWM plan the procedures to be used to ensure compliance with those conditions, and thereafter document such compliance in the BW record book. Vessels using water from a PWS must use such water exclusively unless the usage is in accordance with § 151.2040 of this subpart. Vessels using PWS water as ballast must have either—

(i) Previously cleaned the ballast tanks (including removing all residual sediments) and not subsequently introduced ambient water; or

(ii) Never introduced ambient water to those tanks and supply lines.

(3) Perform complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water, unless the vessel is required to employ an approved BWMS per the schedule found in § 151.2035(b) of this subpart. An alternate management system (AMS) that meets the requirements of § 151.2026 of this subpart may also be used, so long as it was installed on the vessel prior to the date that the vessel is required to comply with the BWDS in accordance with § 151.2035(b) of this subpart. If using an AMS, the master, owner, operator, agent, or person in charge of the vessel subject to this subpart may

employ the AMS for no longer than 5 years from the date they would otherwise be required to comply with the BWDS in accordance with § 151.2035(b) of this subpart;

(4) Do not discharge ballast water into waters of the United States.

(5) Discharge to a facility onshore or to another vessel for purposes of treatment. Any vessel owner/operator discharging ballast water to a facility onshore or to another vessel must ensure that all vessel piping and supporting infrastructure up to the last manifold or valve immediately before the dock manifold connection of the receiving facility or similar appurtenance on a reception vessel prevents untreated ballast water from being discharged into waters of the United States.

(b) Requests for approval of BWMS must be submitted to the Commanding Officer (Marine Safety Center), U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102, or by email to *msc@uscg.mil,* in accordance with 46 CFR part 162.

(c) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2060 and 151.2070 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). Section 15 CFR 754.2(j)(1)(iii) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable laws and regulations.

(e) This subpart does not affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

(f) This subpart does not affect or supersede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

(g) Vessels with installed BWMS for testing and evaluation by an Independent Laboratory in accordance with the requirements of 46 CFR 162.060–10 and 46 CFR 162.060–28 will be deemed to be in compliance with paragraph (a)(1) of this section.

§ 151.2026 Alternate management systems.

(a) A manufacturer whose ballast water management system (BWMS) has been approved by a foreign administration pursuant to the standards set forth in the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, may request in writing, for the Coast Guard to make a determination that their BWMS is an alternate management system (AMS). Requests for determinations under this section must include:

(1) The type-approval certificate for the BWMS.

(2) Name, point of contact, address, and phone number of the authority overseeing the program;

(3) Final test results and findings, including the full analytical procedures and methods, results, interpretations of the results, and full description and documentation of the Quality Assurance procedures (i.e., sample chain of custody forms, calibration records, etc.);

(4) A description of any modifications made to the system after completion of the testing for which a determination is requested; and

(5) A type approval application as described under 46 CFR 162.060–12.

(i) Once ballast water management systems are type approved by the Coast Guard and available for a given class, type of vessels, or specific vessel, those vessels will no longer be able to install AMS in lieu of type approved systems.

(ii) [Reserved]

(b) Requests for determinations must be submitted in writing to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102.

(c) If using an AMS that was installed on the vessel prior to the date that the vessel is required to comply with the ballast water discharge standard in accordance with § 151.2035(b), the master, owner, operator, agent, or person in charge of the vessel subject to this subpart may employ such AMS for no longer than 5 years from the date they would otherwise be required to comply with the ballast water discharge standard in accordance with the implementation schedule in § 151.2035 (b) of this subpart. To ensure the safe and effective management and operation of the AMS equipment, the master, owner, operator, agent or person in charge of the vessel must ensure the AMS is maintained and operated in conformity with the system specifications.

(d) An AMS determination issued under this section may be suspended, withdrawn, or terminated in accordance with the procedures contained in 46 CFR 162.060–18.

§ 151.2030 Ballast water discharge standard (BWDS).

(a) Vessels employing a Coast Guard-approved ballast water management system (BWMS) must meet the following BWDS by the date listed in § 151.2035(b) of this subpart:

(1) For organisms greater than or equal to 50 micrometers in minimum dimension: Discharge must include fewer than 10 organisms per cubic meter of ballast water.

(2) For organisms less than 50 micrometers and greater than or equal to 10 micrometers: Discharge must include fewer than 10 organisms per milliliter (mL) of ballast water.

(3) Indicator microorganisms must not exceed:

(i) For toxicogenic *Vibrio cholerae* (serotypes O1 and O139): A concentration of less than 1 colony forming unit (cfu) per 100 mL.

(ii) For *Escherichia coli:* a concentration of fewer than 250 cfu per 100 mL.

(iii) For intestinal enterococci: A concentration of fewer than 100 cfu per 100 mL.

(b) [Reserved]

(c) The Coast Guard will conduct a practicability review as follows:

(1) No later than January 1, 2016, the Coast Guard will publish the results of a practicability review to determine—

(i) Whether technology to comply with a performance standard more stringent than that required by paragraph (a) of this section can be practicably implemented, in whole or in part, and, if so, the Coast Guard will schedule a rulemaking to implement the more stringent standard; and

(ii) Whether testing protocols that can assure accurate measurement of compliance with a performance standard more stringent than that required by paragraph (a) of this section can be practicably implemented.

(2) If the Coast Guard determines on the basis of a practicability review conducted under paragraph (c)(1) of this section that technology to achieve a significant improvement in ballast water treatment efficacy could be practicably implemented, the Coast Guard will report this finding and will, no later than January 1, 2017, initiate a rulemaking that would establish performance standards and other requirements or conditions to ensure to the maximum extent practicable that aquatic nuisance species are not discharged into waters of the United States from vessels. If the Coast Guard

subsequently finds that it is not able to meet this schedule, the Coast Guard will publish a notice in the **Federal Register** so informing the public, along with an explanation of the reason for the delay, and a revised schedule for rule making that shall be as expeditious as practicable.

(3) When conducting the practicability review as described in paragraph (c)(1) of this section, the Coast Guard will consider—

(i) The capability of any identified technology to achieve a more stringent BWDS, in whole or in part;

(ii) The effectiveness of any identified technology in the shipboard environment;

(iii) The compatibility of any identified technology with vessel design and operation;

(iv) The safety of any identified technology;

(v) Whether the use of any identified technology may have an adverse impact on the environment;

(vi) The cost of any identified technology;

(vii) The economic impact of any identified technology, including the impact on shipping, small businesses, and other uses of the aquatic environment;

(viii) The availability, accuracy, precision, and cost of methods and technologies for measuring the concentrations of organisms, treatment chemicals, or other pertinent parameters in treated ballast water as would be required under any alternative discharge standards;

(ix) Any requirements for the management of ballast water included in the most current version of the Environmental Protection Agency's Vessel General Permit and any documentation available from the EPA regarding the basis for these requirements; and

(x) Any other factor that the Coast Guard considers appropriate that is related to the determination of whether identified technology is performable, practicable, and/or may possibly prevent the introduction and spread of non-indigenous aquatic invasive species.

§ 151.2035 Implementation schedule for approved ballast water management methods.

(a) To discharge ballast water into waters of the United States, the master, owner, operator, agent, or person in charge of a vessel subject to § 151.2025 of this subpart must either ensure that the ballast water meets the ballast water discharge standard as defined in § 151.2030(a), use an AMS as described in § 151.2025(a)(3) or ballast with water from a U.S. public water system, as described in § 151.2025(a)(2), according to the schedule in paragraph (b) of this section.

(b) *Implementation Schedule for the Ballast Water Management Discharge Standard for vessels using a Coast Guard approved BWMS to manage ballast water discharged to waters of the U.S.* After the dates listed in Table 151.2035(b), vessels may use a USCG-approved BWMS and comply with the discharge standard, use PWS per § 151.2025(a)(2), or use a previously installed AMS per § 151.2025(a)(3).

TABLE 151.2035(b)—IMPLEMENTATION SCHEDULE FOR APPROVED BALLAST WATER MANAGEMENT METHODS

	Vessel's ballast water capacity	Date constructed	Vessel's compliance date
New vessels	All	On or after December 1, 2013	On delivery.
Existing vessels	Less than 1500 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2016.
	1500–5000 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2014.
	Greater than 5000 m^3	Before December 1, 2013	First scheduled drydocking after January 1, 2016.

§ 151.2036 Extension of compliance date.

The Coast Guard may grant an extension to the implementation schedule listed in § 151.2035(b) of this subpart only in those cases where the master, owner, operator, agent, or person in charge of a vessel subject to this subpart can document that despite all efforts to meet the ballast water discharge standard requirements in § 151.2030 of this subpart, compliance is not possible. Any extension request must be made no later than 12 months before the scheduled implementation date listed in § 151.2035(b) of this subpart and submitted in writing to the Commandant (CG–522), U.S. Coast Guard Office of Operating and Environmental Standards, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126. Summary information concerning all extension decisions, including the name of the vessel and vessel owner, the term of the extension, and the basis for the extension will be promptly posted on the Internet. Extensions will be for no longer than the minimum time needed, as determined by the Coast Guard, for the vessel to comply with the requirements of § 151.2030.

§ 151.2040 Discharge of ballast water in extraordinary circumstances.

(a) The Coast Guard will allow the master, owner, operator, agent, or person in charge of a vessel that cannot practicably meet the requirements of § 151.2025(a) of this subpart, either because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time and the vessel retains ballast water onboard or because the master of the vessel has identified safety or stability concerns, to discharge ballast water in areas other than the Great Lakes and the Hudson River north of the George Washington Bridge.

(1) The Coast Guard will not allow such a discharge if the vessel is required to have a Coast Guard-approved ballast water management system (BWMS) per the implementation schedule found in § 151.2035(b) of this subpart.

(2) If the Coast Guard allows the discharge of ballast water as described in paragraph (a) of this section, the master, owner, operator, agent, or person in charge of the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety of the vessel for cargo operations.

(3) Ballast water records must be made available to the local Captain of the Port (COTP) upon request.

(4) Vessels on a voyage to the Great Lakes or the Hudson River north of the George Washington Bridge must comply with the requirements of 33 CFR 151.1515.

(b) If the installed BWMS required by this subpart stops operating properly during a voyage, or the vessel's BWM method is unexpectedly unavailable, the person directing the movement of the vessel must ensure that the problem is

reported to the nearest COTP or District Commander as soon as practicable. The vessel may continue to the next port of call, subject to the directions of the COTP or District Commander, as provided by part 160 of this chapter.

(1) The Coast Guard will normally allow a vessel that cannot practicably meet the requirements of § 151.2025(a)(1) of this subpart because its installed BWMS is inoperable, or the vessel's BWM method is unexpectedly unavailable, to employ one of the other ballast water management (BWM) methods listed in § 151.2025(a) of this subpart.

(2) If the master of the vessel determines that the vessel cannot employ other BWM methods due to the voyage or safety concerns listed in paragraph (a) of this section, the Coast Guard will normally allow the vessel to discharge ballast water in areas other than the Great Lakes and the Hudson River north of the George Washington Bridge.

(3) If the Coast Guard approves such an allowance, the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety and stability of the vessel for cargo operations. Ballast water records must be made available to the local COTP upon request.

(c) Nothing in this subpart relieves the master, owner, operator, agent, or person in charge of a vessel of any responsibility, including ensuring the safety and stability of the vessel and the safety of the crew and passengers.

§ 151.2050 Additional requirements—nonindigenous species reduction practices.

The master, owner, operator, agent, or person in charge of any vessel equipped with ballast water tanks that operates in the waters of the United States must follow these practices:

(a) Avoid the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.

(b) Minimize or avoid uptake of ballast water in the following areas and situations:

(1) Areas known to have infestations or populations of harmful organisms and pathogens (e.g., toxic algal blooms).

(2) Areas near sewage outfalls.

(3) Areas near dredging operations.

(4) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be turbid.

(5) In darkness, when bottom-dwelling organisms may rise up in the water column.

(6) Where propellers may stir up the sediment.

(7) Areas with pods of whales, convergence zones, and boundaries of major currents.

(c) Clean the ballast tanks regularly to remove sediments. Sediments must be disposed of in accordance with local, State, and Federal regulations.

(d) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the United States.

(e) Rinse anchors and anchor chains when the anchor is retrieved to remove organisms and sediments at their places of origin.

(f) Remove fouling organisms from the vessel's hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, State and Federal regulations.

(g) Maintain a ballast water management (BWM) plan that has been developed specifically for the vessel and that will allow those responsible for the plan's implementation to understand and follow the vessel's BWM strategy and comply with the requirements of this subpart. The plan must include—

(1) Detailed safety procedures;

(2) Actions for implementing the mandatory BWM requirements and practices;

(3) Detailed fouling maintenance and sediment removal procedures;

(4) Procedures for coordinating the shipboard BWM strategy with Coast Guard authorities;

(5) Identification of the designated officer(s) in charge of ensuring that the plan is properly implemented;

(6) Detailed reporting requirements and procedures for ports and places in the United States where the vessel may visit; and

(7) A translation of the plan into English, French, or Spanish if the vessel's working language is another language.

(h) Train the master, operator, person in charge, and crew on the application of ballast water and sediment management and treatment procedures.

(i) When discharging ballast water to a reception facility in the United States, discharge only to reception facilities that have an NPDES permit to discharge ballast water.

§ 151.2055 Deviation from planned voyage.

As long as ballast water exchange (BWE) is an allowable ballast water management option under §§ 151.2025 and 151.2035 of this subpart, the Coast Guard will not require a vessel to deviate from its voyage or delay the voyage in order to conduct BWE. A vessel may be required to deviate from its voyage or delay the voyage if BWE is directed by a Captain of the Port pursuant to § 151.2040(b) of this subpart.

§ 151.2060 Reporting requirements.

(a) Ballast water reporting requirements exist for each vessel subject to this subpart bound for ports or places of the United States regardless of whether a vessel operated outside of the Exclusive Economic Zone (EEZ), unless exempted in § 151.2015 of this subpart.

(b) The master, owner, operator, agent, or person in charge of a vessel subject to this subpart and this section must provide the information required by § 151.2070 of this subpart in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate Captain of the Port (COTP). The Ballast Water Reporting Form (Office of Management and Budget form Control No. 1625–0069) and the instructions for completing it are available on the National Ballast Information Clearinghouse's Web site at *http://invasions.si.edu/nbic/submit.html*. Information must be submitted as follows:

(1) *For any vessel bound for the Great Lakes from outside the EEZ:*

(i) Fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to the U.S. Coast Guard (USCG) COTP, Buffalo, Massena Detachment (315–769–5032).

(ii) Non-U.S. and non-Canadian flag vessels may complete the ballast water information section of the form required by the St. Lawrence Seaway, ''Pre-entry Information from Foreign Flagged Vessels Form,'' and submit it in accordance with the applicable Seaway notice as an alternative to this requirement.

(2) *For any vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ:* Fax the required information to the USCG COTP, New York (718–354–4249) at least 24 hours before the vessel enters New York, NY.

(3) *For any vessel that is equipped with ballast water tanks and bound for ports or places in the United States and not addressed in paragraphs (b)(1) and (b)(2) of this section:* If a vessel's voyage is less than 24 hours, report the required information before departing the port or place of departure. If a voyage exceeds 24 hours, report the required information at least 24 hours before arrival at the port or place of destination. The information must be sent to the National Ballast Information Clearinghouse using only one of the following means:

(i) Via the Internet at *http://invasions.si.edu/nbic/submit.html*.

(ii) Email to *NBIC@BallastReport.org*.
(iii) Fax to 301–261–4319.
(iv) Mail to U.S. Coast Guard, c/o Smithsonian Environmental Research Center, P.O. Box 28, Edgewater, MD 21037–0028.

(c) If the information submitted in accordance with this section changes, the master, owner, operator, agent, or person in charge of the vessel must submit an amended report before the vessel departs the waters of the United States.

§ 151.2065 Equivalent reporting methods for vessels other than those entering the Great Lakes or Hudson River after operating outside the U.S. Exclusive Economic Zone or Canadian equivalent.

For vessels required to report under § 151.2060(b)(3) of this subpart, the Chief, Environmental Standards Division (CG–5224), acting for the Assistant Commandant for Marine Safety, Security, and Stewardship (CG–5), may, upon receipt of a written request, consider and approve alternative methods of reporting if—

(a) Such methods are at least as effective as those required by § 151.2060 of this subpart; and

(b) Compliance with § 151.2060 of this subpart is economically or physically impractical. The Chief, Environmental Standards Division (CG–5224), will approve or disapprove a request submitted in accordance with this section within 30 days of receipt of the request.

§ 151.2070 Recordkeeping requirements.

(a) The master, owner, operator, agent, or person in charge of a vessel bound for a port or place in the United States, unless specifically exempted by § 151.2015 of this subpart, must ensure the maintenance of written records that include the following information:

(1) *Vessel information.* This includes the name, International Maritime Organization (IMO) number (official number if IMO number is not issued), vessel type, owner or operator, gross tonnage, call sign, and State of registry (flag).

(2) *Voyage information.* This includes the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(3) *Total ballast water information.* This includes the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, and total number of ballast water tanks in ballast. Use units of measurements such as metric tons (MT), cubic meters (m^3), long tons (LT), and short tons (ST).

(4) *Ballast water management (BWM).* This includes the total number of ballast tanks/holds that are to be discharged into the waters of the United States or to a reception facility.

(i) If the vessel uses an alternative BWM method, note the number of tanks that are managed using an alternative method, as well as the type of method used.

(ii) Indicate whether the vessel has a BWM plan and IMO ballast water management guidelines onboard, and whether the BWM plan is used.

(5) *Information on ballast water tanks that are to be discharged into the waters of the United States or to a reception facility.* Include the following:

(i) The origin of ballast water. This includes date(s), location(s), volume(s) and temperature(s). If a tank has undergone ballast water exchange (BWE), list the loading port of the ballast water that was discharged during the exchange.

(ii) The date(s), location(s), volume(s), method, thoroughness (percentage exchanged, if BWE conducted), and sea height at time of exchange of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or to a reception facility.

(6) *Discharge of sediment.* Include the name and location of the facility where sediment disposal will take place, if sediment is to be discharged within the jurisdiction of the United States.

(7) *Certification of accurate information.* Include the master, owner, operator, agent, person in charge, or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and certifying compliance with the requirements of this subpart.

(b) The master, owner, operator, agent, or person in charge of a vessel subject to this section must retain a signed copy of this information onboard the vessel for 2 years.

(c) Two alternative ways to meet the requirements of this section are—

(1) Completing and retaining the Ballast Water Reporting Form contained in the IMO ballast water management guidelines; or

(2) Completing the ballast water information section of the form required by the St. Lawrence Seaway Pre-entry Information from Foreign Flagged Vessels.

(d) The master, owner, operator, agent, or person in charge of a vessel subject to this section must retain the monitoring records required in 46 CFR 162.060–20(b) for 2 years. These records may be stored on digital media but must be viewable for Coast Guard inspection.

(e) The information required by this subpart may be used to satisfy the ballast water recordkeeping requirements for vessels subject to § 151.2025(c) of this subpart and 33 CFR part 151 subpart C.

§ 151.2075 Enforcement and compliance.

(a) The master, owner, operator, agent, or person in charge of a vessel must provide the Captain of the Port (COTP) with access to the vessel in order to take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this subpart.

(b) The master, owner, operator, agent, or person in charge of a vessel subject to this section must provide the records to the COTP upon request, as required by § 151.2070 of this subpart.

(c) Vessels with installed ballast water management systems are subject to Coast Guard inspection. Every vessel must have a sampling port(s) designed and installed in accordance with 46 CFR 162.060–28(f) and (f)(2) at each overboard discharge point.

(d) In this subpart, wherever multiple entities are responsible for compliance with any requirement of the rule, each entity is jointly liable for a violation of such requirement.

§ 151.2080 Penalties.

(a) A person who violates this subpart is liable for a civil penalty not to exceed $35,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

Appendix to Subpart D of Part 151 [Removed]

Appendix to Subpart D [Removed]

■ 13. Remove the Appendix to subpart D of part 151.

Title 46—Shipping

CHAPTER I—COAST GUARD

Subchapter Q—Equipment, Construction, and Materials: Specifications and Approval

PART 162—ENGINEERING EQUIPMENT

■ 14. Add subpart 162.060 to part 162 to read as follows:

Subpart 162.060—Ballast Water Management Systems

Sec.
162.060–1 Purpose and scope.

162.060–3 Definitions.
162.060–5 Incorporation by reference.
162.060–10 Approval procedures.
162.060–12 Use and acceptance of existing test data.
162.060–14 Information requirements for the ballast water management system (BWMS) application.
162.060–16 Changes to an approved ballast water management system (BWMS).
162.060–18 Suspension, withdrawal or termination of approval.
162.060–20 Design and construction requirements.
162.060–22 Marking requirements.
162.060–24 Test Plan requirements.
162.060–26 Land-based testing requirements.
162.060–28 Shipboard testing requirements.
162.060–30 Testing requirements for ballast water management system (BWMS) components.
162.060–32 Testing and evaluation requirements for active substances, preparations, and relevant chemicals.
162.060–34 Test Report requirements.
162.060–36 Quality Assurance Project Plan (QAPP) requirements.
162.060–38 Operation, Maintenance, and Safety Manual (OMSM).
162.060–40 Requirements for independent laboratories (ILs).
162.060–42 Responsibilities for independent laboratories (ILs).

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

Subpart 162.060—Ballast Water Management Systems

§ 162.060–1 Purpose and scope.

This subpart contains procedures and requirements for approval of complete ballast water management systems to be installed onboard vessels for the purpose of complying with the ballast water discharge standard of 33 CFR part 151, subparts C and D.

§ 162.060–3 Definitions.

As used in this subpart—

Active substance means a chemical or an organism, including a virus or a fungus, that has a general or specific action on or against nonindigenous species.

Administration means the government of the nation/State under whose authority a vessel is operating.

Ballast water means any water and suspended matter taken onboard a vessel to control or maintain trim, draught, stability, or stresses of the vessel, regardless of how it is carried.

Ballast water management system (BWMS) means any system which processes ballast water to kill, render harmless, or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

Ballast water system means the tanks, piping, valves, pumps, sea chests, and any other associated equipment that the vessel uses for the purposes of ballasting.

Ballast water treatment equipment means that part of the BWMS that mechanically, physically, chemically, or biologically processes ballast water, either singularly or in combination, to kill, render harmless, or remove organisms within ballast water and sediments.

Challenge water means water just prior to treatment. In land-based tests, source water may be augmented to achieve required challenge water conditions.

Control and monitoring equipment means that part of the BWMS required to operate, control, and assess the effective operation of the ballast water treatment equipment.

Hazardous location means areas where fire or explosion hazards may exist due to the presence of flammable gases/vapors, flammable liquids, combustible dust, or ignitable fibers, as determined in accordance with the standards of construction applicable to the vessel on which the BWMS is to be installed.

Hazardous materials means hazardous materials as defined in 49 CFR 171.8; hazardous substances designated under 40 CFR part 116.4; reportable quantities as defined under 40 CFR 117.1; materials that meet the criteria for hazard classes and divisions in 49 CFR part 173; materials under 46 CFR 153.40 determined by the Coast Guard to be hazardous when transported in bulk; flammable liquids defined in 46 CFR 30.10–22; combustible liquids as defined in 46 CFR 30.10–15; materials listed in Table 46 CFR 151.05, Table 1 of 46 CFR 153, or Table 4 of 46 CFR part 154; or any liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

Independent laboratory means an organization that meets the requirements in 46 CFR 159.010–3. In addition to commercial testing laboratories, which may include not-for-profit organizations, the Commandant may also accept classification societies and agencies of governments (including State and Federal agencies of the United States) that are involved in the evaluation, inspection, and testing of BWMS.

In-line treatment means a treatment system or technology used to treat ballast water during normal flow of ballast uptake, discharge, or both.

In-tank treatment means a treatment system or technology used to treat ballast water during the time that it resides in the ballast tanks.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest as defined under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et.seq.) and 40 CFR 152.3.

Preparation means any commercial formulation containing one or more active substances, including any additives. This definition also includes any active substances generated onboard a vessel for the purpose of ballast water management to comply with the ballast water discharge standard codified in 33 CFR part 151 subpart C or D.

Quality Assurance Project Plan (QAPP) means a project-specific technical document reflecting the implementation of Quality Assurance and Quality Control activities, including specifics of the BWMS to be tested, the independent laboratory, and other conditions affecting the actual design and implementation of the required tests and evaluations.

Relevant chemical means any transformation or reaction product that is produced during the treatment process or in the receiving environment and which may be of concern to the aquatic environment and human health when discharged.

Representative sample means a random sample, in which every item of interest (organisms, molecules, etc.) in the larger population has an unbiased chance of appearing.

Sampling port means the equipment installed in the ballast water piping through which representative samples of the ballast water being discharged are extracted. This is equivalent to the term ''sampling facility'' under the International Maritime Organization (IMO) Guidelines for Ballast Water Sampling (G2), published as IMO Resolution MEPC.173(58) on October 10, 2008.

Source water means the body of water from which water is drawn for either land-based or shipboard testing.

Test facility means the location where the independent laboratory conducts land-based, component, active substance, and relevant chemical testing and evaluations, as required by this subpart.

§ 162.060–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public.

All approved material is 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.* Also, it is available for inspection from the Commandant (CG–52), Commercial Regulations and Standards Directorate, U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) International Electrotechnical Commission (IEC), 3 rue Varembe, P.O. Box 131, 1211 Geneva 20, Switzerland.

(1) IEC 60529, Classification of Degrees of Protection by Enclosures (IP Code), Edition 2.1 consolidated with amendment 1:1999 (dated February, 2001), IBR approved for § 162.060–30.

(2) [Reserved]

(c) International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, Case postale 56 CH–1211 Geneva 20, Switzerland.

(1) ISO/IEC 17025:2005(E), General Requirements for the Competence of Calibration and Testing Laboratories, Second Edition (dated May 15, 2005), IBR approved for § 162.060–36.

(2) ISO/IEC 17025:2005/Cor.1:2006(E), General Requirements for the Competence of Testing and Calibration Laboratories, Technical Corrigendum 1, (dated August 15, 2006), IBR approved for § 162.060–36.

(d) U.S. Environmental Protection Agency (EPA), Environmental Technology Verification Program, National Risk Management Research Laboratory Office of Research and Development, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue (MS–104), Edison, New Jersey 08837.

(1) EPA/600/R–10/146, Generic Protocol for the Verification of Ballast Water Treatment Technologies, version 5.1, (dated September 2010), IBR approved for §§ 162.060–26 and 162.060–28 (ETV Protocol).

(2) [Reserved]

§ 162.060–10 Approval procedures.

(a) Not less than 30 days before initiating any testing of a ballast water management system (BWMS), the results of which are intended for use in an application for type approval, the manufacturer must submit a Letter of Intent (LOI) providing as much of the following information as possible to the Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC), 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102, or by email to *msc@uscg.mil:*

(1) Manufacturer's name, address, and point of contact, with telephone number or email address.

(2) Name and location of independent laboratory and associated test facilities and subcontractors, plus expected dates and locations for actual testing.

(3) Model name, model number, and type of BWMS.

(4) Expected date of submission of full application package to the Coast Guard.

(5) Name, type of vessel, and expected geographic locations for shipboard testing.

(b) The manufacturer must ensure evaluation, inspection, and testing of the BWMS is conducted by an independent laboratory, accepted by the Coast Guard, in accordance with §§ 162.060–20 through 162.060–40 of this subpart. Testing may begin 30 days after submission of the LOI unless otherwise directed by the Coast Guard.

(1) If an evaluation, inspection, or test required by this section is not practicable or applicable, a manufacturer may submit a written request to the Commanding Officer, U.S. Coast Guard MSC, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102, or by email to *msc@uscg.mil,* for approval of alternatives as equivalent to the requirements in this section. The request must include the manufacturer's justification for any proposed changes and contain full descriptions of any proposed alternative tests.

(2) The Coast Guard will notify the manufacturer of its determination under paragraph (b)(1) of this section. Any limitations imposed by the BWMS on testing procedures and all approved deviations from any evaluation, inspection, or testing required by this subpart must be duly noted in the Experimental Design section of the Test Plan.

(c) The manufacturer must submit an application for approval in accordance with § 162.060–14 of this subpart.

(d) Upon receipt of an application completed in compliance with § 162.060–14 of this subpart, the MSC will evaluate the application and either approve, disapprove, or return it to the manufacturer for further revision.

(e) In addition to tests and evaluations required by this subpart, the Coast Guard will independently conduct environmental analyses of each system in accordance with the National Environmental Policy Act, the Endangered Species Act, and/or other environmental statutes. The Coast Guard advises applicants that applications containing novel processes or active substances may encounter significantly longer reviews during these environmental evaluations.

(f) A BWMS is eligible for approval if—

(1) It meets the design and construction requirements in § 162.060–20 of this subpart;

(2) It is evaluated, inspected, and tested under land-based and shipboard conditions in accordance with §§ 162.060–26 and 162.060–28 of this subpart, respectively, and thereby demonstrates that it consistently meets the ballast water discharge standard in 33 CFR part 151, subparts C and D;

(3) All applicable components of the BWMS meet the component testing requirements of § 162.060–30 of this subpart;

(4) The BWMS meets the requirements of § 162.060–32 of this subpart if the BWMS uses an active substance or preparation; and

(5) The ballast water discharge, preparation, active substance, or relevant chemical are not found to be persistent, bioaccumulative, or toxic when discharged.

(g) After evaluation of an application, the Coast Guard will advise the applicant in accordance with 46 CFR 159.005–13 whether the BWMS is approved. If the BWMS is approved, a certification number will be issued and an approval certificate sent to the applicant in accordance with 46 CFR 2.75–5. The approval certificate will list conditions of approval applicable to the BWMS.

§ 162.060–12 Use and acceptance of existing test data.

(a) A manufacturer whose ballast water management system (BWMS) has completed approval testing for a foreign administration in accordance with the International Maritime Organization's Guidelines for Approval of Ballast Water Management Systems (G8) may use the data and information developed during such approval testing to support the submission of an application pursuant to § 162.060–14 of this subpart. The applicant must submit the data and other information developed during approval testing and evaluation for another administration, and include a concise but thorough explanation of how the submission meets or exceeds the requirements of this subpart in respect to design, material and manufacture, and ability to meet the BWDS requirements.

(b) Applications under paragraph (a) of this section will not need to comply with the requirements for advance notice under § 162.060–10(a) of this subpart for testing that has already occurred; or with the requirements that

all evaluation, inspection, and testing of the BWMS is conducted by an independent laboratory, previously accepted by the Coast Guard, under § 162.060–10(b) of this subpart. However—

(1) If the applicant determines, prior to submission of an application, that one or more aspects of the Coast Guard's requirements for approval of a BWMS are not satisfied by the data and information developed for approval by another administration, and that additional testing and evaluation is required, the applicant will notify the Coast Guard of the intent to conduct the new testing in accordance with the requirements of § 162.060–10(a) and (b)(1) of this subpart.

(2) While laboratories and test facilities that conducted the test and evaluation for approval by another administration are not required to have been designated as independent laboratories under the requirements of this subpart at the time of such work, as would otherwise be required under § 162.060–10(b) of this subpart, all laboratories and test facilities must have met the requirements under 46 CFR 159.010–3 and 159.010–5(a) at the time of such work. It is the responsibility of the applicant to ensure that the satisfaction of this requirement is adequately documented in the application.

§ 162.060–14 Information requirements for the ballast water management system (BWMS) application.

(a) A complete BWMS application must contain all of the following information:

(1) The name and location of the independent laboratory conducting approval tests and evaluations.

(2) Two sets of plans describing the BWMS, as specified in 46 CFR 159.005–12.

(3) An Operation, Maintenance, and Safety Manual for the BWMS that meets the requirements in § 162.060–38 of this subpart.

(4) A bill of materials showing all components and specifications of the BWMS.

(5) A list of any systems or components of the BWMS that may require certification as marine portable tanks.

(6) A list of any pressure vessels used as a part of the BWMS, along with a description of the pressure vessel building standard, or code, or why the pressure vessel should be considered exempt from any requirements. Manufacturers must also submit detailed pressure vessel plans if they intend to fabricate pressure vessels, heat exchangers, evaporators, and similar appurtenances.

(7) Documentation of all necessary approvals, registrations, and other documents or certifications required for any active substances, preparations, or relevant chemicals used by the BWMS. The documentation must include the following:

(i) A list of any active substances, preparations, or relevant chemicals that are used, produced, generated as a byproduct, and/or discharged in association with the operation of the BWMS.

(ii) A list of all limitations or restrictions that must be complied with during the approval testing and evaluations, including any water quality limits established by the Environmental Protection Agency, States, or tribes, under the Clean Water Act.

(8) A detailed description of Quality Control procedures, in-process and final inspections, tests followed in manufacturing the item, and construction and sales record keeping systems.

(9) The completed Test Report required by § 162.060–34 of this subpart prepared and submitted by the IL.

(b) The completed application must be sent by the manufacturer to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102.

(c) If examination of the application reveals that it is incomplete, the Coast Guard will return it to the applicant with an explanation.

(d) Additional information, including electronic submission criteria, is available at *http://homeport.uscg.mil/msc*.

§ 162.060–16 Changes to an approved ballast water management system (BWMS).

(a) The manufacturer of a BWMS that is approved by the Coast Guard must notify the Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC), in writing of any change in design or intended operational conditions of the BWMS.

(b) The notification required by paragraph (a) of this section must include—

(1) A description of the change and its advantages; and

(2) An indication of whether or not the original BWMS will be discontinued.

(c) After receipt of the notice and information, the Coast Guard will notify the manufacturer, in writing, of any tests or evaluations that must be conducted, and then determine if BWMS recertification and/or modification is required. The manufacturer may appeal this determination to the Commandant (CG–52), Commercial Regulations and Standards Directorate, U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126.

§ 162.060–18 Suspension, withdrawal, or termination of approval.

The Coast Guard may suspend an approval issued under this subpart or alternate management system (AMS) determination issued under 33 CFR 151.2026(d) of a ballast water management system (BWMS) in accordance with 46 CFR 2.75–40, withdraw an approval or AMS determination in accordance with 46 CFR 2.75–50(a), or terminate an approval or AMS determination in accordance with 46 CFR 2.75–50(b) if the BWMS or AMS, as manufactured—

(a) Is found non-compliant with the conditions of approval;

(b) Is unsuitable for the purpose intended by the manufacturer;

(c) Does not meet the requirements of applicable laws, rules, and regulations, and other Federal requirements when installed and operated as intended by the manufacturer; or

(d) Cannot be maintained to operate as designed, due to lack of parts or necessary support services.

§ 162.060–20 Design and construction requirements.

(a) Unless otherwise authorized by the Commandant, each ballast water management system (BWMS) must be designed and constructed in a manner that—

(1) Ensures simple and effective means for its operation;

(2) Allows operation to be initiated, controlled, and monitored by a single individual, with minimal interaction or attention once normal operation is initiated;

(3) Is robust and suitable for working in the shipboard environment and adequate for its intended service;

(4) Meets recognized national or international standards for all related marine engineering and electrical engineering applications; and

(5) Operates when the vessel is upright, inclined under static conditions at any angle of list up to and including 15°, and when the vessel is inclined under dynamic, rolling conditions at any angle of list up to and including 22.5° and, simultaneously, at any angle of trim (pitching) up to and including 7.5° by bow or stern. The Coast Guard may permit deviations from these angles of inclination by considering the type, size, and service of intended vessels and

considering how the BWMS is to be operated. These deviations must be included on the certificate issued in accordance with § 162.060–10(g) of this subpart.

(b) Each BWMS must have control and monitoring equipment that—

(1) Automatically monitors and adjusts necessary treatment dosages, intensities, or other aspects required for proper operation;

(2) Incorporates a continuous self-monitoring function during the period in which the BWMS is in operation;

(3) Records proper functioning and failures of the BWMS;

(4) Records all events in which an alarm is activated for the purposes of cleaning, calibration, or repair;

(5) Is able to store data for at least 6 months and to display or print a record for official inspections as required; and

(6) In the event that the control and monitoring equipment is replaced, actions must be taken to ensure the data recorded prior to replacement remain available onboard for a minimum of 24 months.

(c) Each BWMS must be designed and constructed with the following operating and emergency controls:

(1) Visual means of indicating (both on the BWMS and in a normally manned space) when the BWMS is operating, including a visual alarm activated whenever the BWMS is in operation for the purpose of cleaning, calibration, or repair.

(2) Audio and visual alarm signals in all stations from which ballast water operations are controlled in case of any failure(s) compromising the proper operation of the BWMS.

(3) Means to activate stop valves, as applicable, if the BWMS fails.

(4) Suitable manual by-passes or overrides to protect the safety of the vessel and personnel in the event of an emergency.

(5) Means that compensate for a momentary loss of power during operation of the BWMS so that unintentional discharges do not occur.

(6) Means of automatic operation for BWMS installed in unoccupied machinery spaces, from the time placed on-line until the time secured.

(7) Adequate alarms for the unintentional release of active substances, preparations, relevant chemicals, or hazardous materials used in or produced by the BWMS.

(d) A BWMS must comply with the relevant requirements for use in a hazardous location, as defined in 46 CFR subpart 111.105, or its foreign equivalent, if it is intended to be fitted in a hazardous location. Any electrical equipment that is a component of the BWMS must be installed in a non-hazardous location unless certified as safe for use in a hazardous location. Any moving parts which are fitted in hazardous locations must be arranged in a manner that avoids the formation of static electricity. Certificates issued under § 162.060–10(g) for systems approved for installation in hazardous locations must be so noted.

(e) To ensure continued operational performance of the BWMS without interference, the following conditions must be incorporated into the design:

(1) Each part of the BWMS that the manufacturer's instructions require to be serviced routinely or that is liable to wear or damage must be readily accessible in the installed position(s) recommended by the manufacturer.

(2) To avoid interference with the BWMS, every access of the BWMS beyond the essential requirements, as determined by the manufacturer, must require the breaking of a seal, and, where possible for the purpose of maintenance, activate an alarm.

(3) Simple means must be provided aboard the vessel to identify drift and repeatability fluctuations and re-zero measuring devices that are part of the control and monitoring equipment.

(f) Each BWMS must be designed so that it does not rely in whole or in part on dilution of ballast water as a means of achieving the ballast water discharge standard as required in 33 CFR part 151, subparts C or D.

(g) Adequate arrangements for storage, application, mitigation, monitoring (including alarms), and safe handling must be made for all BWMS that incorporate the use of, produce, generate, or discharge a hazardous material, active substance, preparation and/or pesticide in accordance with Coast Guard regulations on handling/storage of hazardous materials (33 CFR part 126) and any other applicable Federal, State, and local requirements.

(h) For any BWMS that incorporates the use of or generates active substances, preparations, or chemicals, the BWMS must be equipped with each of the following, as applicable:

(1) A means of indicating the amount and concentration of any chemical in the BWMS that is necessary for its effective operation.

(2) A means of indicating when chemicals must be added for the proper continued operation of the BWMS.

(3) Sensors and alarms in all spaces that may be impacted by a malfunction of the BWMS.

(4) A means of monitoring all active substances and preparations and relevant chemicals in the treated discharge.

(5) A means to ensure that any maximum dosage or maximum allowable discharge concentration of active substances and preparations is not exceeded at any time.

(6) Proper storage of each chemical defined as a hazardous material in 49 CFR 171.8 that is specified or provided by the manufacturer for use in the operation of a BWMS. Each such chemical that is stowed onboard must be labeled and stowed in accordance with the procedures in 46 CFR part 147.

§ 162.060–22 Marking requirements.

(a) Each ballast water management system (BWMS) manufactured for Coast Guard approval must have a nameplate which is securely fastened to the BWMS and plainly marked by the manufacturer with the information listed in paragraph (b) of this section.

(b) Each nameplate must include the following information:

(1) Coast Guard approval number assigned to the BWMS in the certificate of approval.

(2) Name of the manufacturer.

(3) Name and model number of the BWMS.

(4) The manufacturer's serial number for the BWMS.

(5) The month and year of manufacture completion.

(6) The maximum allowable working pressure for the BWMS.

(c) The information required by paragraph (b) of this section must appear on a nameplate attached to, or in lettering on, the BWMS. The nameplate or lettering must be capable of withstanding the combined effects of normal wear and tear and exposure to water, salt spray, direct sunlight, heat, cold, and any substance used in the normal operation and maintenance of the BWMS without loss of readability. The nameplate must not be obscured by paint, corrosion, or other materials that would hinder readability.

§ 162.060–24 Test Plan requirements.

(a) The Coast Guard requires Test Plans for land-based, shipboard, and component testing conducted to meet the requirements of §§ 162.060–26, 162.060–28 and 162.060–30 of this subpart, respectively. Test Plans must include an examination of all the manufacturer's stated requirements and procedures for installation, calibration, maintenance, and operations that will be used by the ballast water management system (BWMS) during each test, as appropriate for the specific test.

(b) Test Plans must also include potential environmental, health, and safety issues; unusual operating

requirements; and any issues related to the disposal of treated ballast water, by-products, or waste streams.

(c) For land-based testing, a Test Plan prepared under the ETV Protocol may be submitted (ETV Protocol incorporated by reference, *see* § 162.060–5). Otherwise, each Test Plan must be in the following format:

(1) Title page, including all project participants.

(2) Table of contents.

(3) Project description and treatment performance objectives.

(4) Project organization and personnel responsibilities.

(5) Description of the independent laboratory and all test facilities and subcontractors.

(6) BWMS description.

(7) Experimental design (including installation/start-up plan for tested equipment).

(8) Challenge conditions and preparation (including the test facility's standard operating procedures for achieving such conditions).

(9) Sampling, data acquisition, and analysis plan, including all necessary procedures.

(10) Data management, analysis, and reporting.

(11) Quality Assurance Project Plan, in accordance with the requirements of § 162.060–36 of this subpart.

(12) Environmental, health, and safety plans.

(13) Applicable references.

§ 162.060–26 Land-based testing requirements.

(a) Each ballast water management system (BWMS) must undergo land-based tests and evaluations that meet the requirements of the ETV Protocol (incorporated by reference, *see* § 162.060–5). The land-based testing will determine if the biological efficacy of the BWMS under consideration for approval is sufficient to meet the applicable ballast water discharge standard (BWDS) and validate those aspects of the operating and maintenance parameters presented by the manufacturer that are appropriate for assessment under the relatively short-term, but well-controlled, circumstances of a land-based test.

(b) The test set up must operate as described in the ETV Protocol Test Plan requirements during at least five consecutive, valid, and successful replicate test cycles. No adjustments to the BWMS are permitted unless specifically detailed in the Operation, Maintenance and Safety Manual. The BWMS must be operated by independent laboratory or independent laboratory subcontractor personnel.

(c) Each valid test cycle must include—

(1) Uptake of source water by pumping at a minimum of 200 m^3/hr;

(2) Treatment of a minimum of 200 m^3 of challenge water with the BWMS;

(3) Pumping of a minimum of 200 m^3 of control water through the test facility in a manner that is in all ways identical to paragraph (c)(2) of this section, except that the BWMS is not used to treat the water;

(4) Retention of the treated and control water in separate tanks for a minimum of 24 hours; and

(5) Discharge of the treated and control water by pumping.

(d) The BWMS must be tested in water conditions for which it will be approved. For each set of test cycles, a salinity range must be chosen. With respect to the salinity of water bodies where the BWMS is intended to be used, the challenge water used in the test set-up must have dissolved and particulate content as described in the ETV Protocol.

(e) The approval certificate issued in accordance with § 162.060–10(g) will list the salinity ranges for which the BWMS is approved.

(f) The BWMS must be tested at its rated capacity or as specified in paragraph (f)(1) of this section for each test cycle and must function to the manufacturer's specifications during the test.

(1) Treatment equipment may be downsized for land-based testing, but only when the following criteria are met:

(i) Treatment equipment with a treatment rated capacity (TRC) equal to or less than 200 m^3/h must not be downscaled.

(ii) Treatment equipment with a TRC greater than 200 m^3/h but less than 1,000 m^3/h may be downscaled to a maximum of 1:5 scale, but must not be less than 200 m^3/h.

(iii) Treatment equipment with a TRC equal to or greater than 1,000 m^3/h may be downscaled to a maximum of 1:100 scale, but must not be less than 200 m^3/h.

(iv) The manufacturer of the BWMS must demonstrate by using mathematical modeling, computational fluid dynamics modeling, and/or by calculations, that any downscaling will not affect the ultimate functioning and effectiveness onboard a vessel of the type and size for which the BWMS will be approved.

(2) Greater scaling may be applied and lower flow rates used other than those described in paragraph (f)(1) of this section if the manufacturer can provide evidence from full-scale shipboard testing, in accordance with paragraph (f)(1)(iv) of this section, that greater scaling and lower flow rates will not adversely affect the testing's ability to predict full-scale compliance with the BWDS. The procedures of § 162.060–10(b)(1) of this subpart must be followed before scaling of flow rates other than those provided in paragraph (f)(1) of this section may be used.

(g) The test set-up, TRC, and scaling of all tests (including mathematical and computational fluid dynamics modeling) must be clearly identified in the Experimental Design section of the Test Plan.

§ 162.060–28 Shipboard testing requirements.

(a) The ballast water management system (BWMS) manufacturer is responsible for making all arrangements for a vessel on which to conduct shipboard tests, including the provision and installation of a BWMS.

(b) Shipboard tests must be conducted throughout a period of operation of at least 6 months. During the period of testing, all ballast water discharged to waters of the United States must be treated by the BWMS.

(c) BWMS approved under this subpart must undergo shipboard tests and evaluations that meet the requirements of this section. The shipboard testing will verify—

(1) That the BWMS under consideration for approval, when installed and operated in the vessel in a location and configuration consistent with its final intended use on operating vessels (e.g., in the engine room or pump room), consistently results in the routine discharge of ballast water that meets the ballast water discharge standard (BWDS) requirements of 33 CFR part 151, subparts C and D; and

(2) That the operating and maintenance parameters identified by the manufacturer in the Operation, Maintenance, and Safety Manual (OMSM) are consistently achieved.

(d) The BWMS to be tested must be installed and operated in the vessel in a location and configuration consistent with its final intended use on operating vessels. Vessel crew must operate the BWMS during testing.

(e) The vessel used as a platform for shipboard testing under this section must be selected to meet the following criteria:

(1) The volumes and rates of ballast water used and treated are representative of the upper end of the treatment rated capacity for which the BWMS is intended to be used. Vessel tank size and flow rates must be equal

to or exceed those used during land-based tests.

(2) The circumstances of the vessel's operation during the period of shipboard testing provide an acceptable range of geographic and seasonal variability conditions.

(i) The source water used for testing is representative of harbor or coastal waters. Testing must include temperate, semi-tropical, or tropical locations with ambient organism concentrations that will provide a significant challenge to the efficacy of the BWMS.

(ii) Concentrations of organisms greater than or equal to 50 micrometers, and organisms less than 50 micrometers and greater than or equal to 10 micrometers in the source water must exceed 10 times the maximum permitted values in the BWDS.

(3) The ports that the vessel visits provide adequate availability of transportation and scientific support needed to accomplish the necessary sampling and analytical procedures during the shipboard tests.

(f) The vessel's ballast water system must be provided with sampling ports arranged in order to collect representative samples of the vessel's ballast water. In addition to the sampling ports designed and installed in accordance with the specifications in the ETV Protocol (incorporated by reference, *see* § 162.060–5), sampling ports must be located—

(1) As close as practicable to the BWMS prior to treatment to determine concentrations of living organisms upon uptake;

(2) As close as practicable to the BWMS overboard outlet prior to the discharge point to determine concentrations of living organisms prior to discharge; and

(3) Elsewhere as necessary to ascertain the proper functioning of the BWMS.

(g) All test results must be reported in accordance with paragraph (i) of this section. The efficacy of the BWMS must be confirmed during at least five consecutive valid test cycles.

(1) A test cycle entails—

(i) The uptake of ballast water by the vessel;

(ii) The storage of ballast water on the vessel;

(iii) Treatment of the ballast water by the BWMS, except in control tanks, if used, with no fine-tuning or adjustment of the system except as specifically detailed in the OMSM; and

(iv) The discharge of ballast water from the vessel.

(2) All test cycles must include quantification of the water quality parameters on uptake.

(3) All test cycles must include discharge tests and quantification of the concentration of living organisms in the treated ballast water on discharge. Sampling and analysis for living organisms will be in accordance with the ETV Protocol.

(4) A test cycle must meet the following criteria in order to be considered valid:

(i) The uptake of the source water must be conducted in accordance with paragraph (e)(2)(i) of this section.

(ii) Source waters must be analyzed for organisms greater than or equal to 50 micrometers and organisms less than 50 micrometers and greater than or equal to 10 micrometers. To simplify the testing program, these source water samples need only be collected and properly preserved and transported for counting by trained microscopists in land-based laboratories. The reported data by taxa (to the lowest reasonably identifiable taxonomic grouping) will be used to characterize the source water biological test conditions.

(iii) The BWMS must operate successfully as designed, maintaining control of all set points and treatment processes, including any pre-discharge conditioning to remove or neutralize residual treatment chemicals or by-products.

(iv) All design or required water quality parameters must be met for the discharged water.

(v) Whole effluent toxicity testing must be conducted in accordance with the December 2008 Environmental Protection Agency (EPA) Vessel General Permit (VGP) requirements (VGP Section 5.8; available at *http://www.epa.gov/npdes/pubs/vessel_vgp_permit.pdf).*

(5) The source water for all test cycles must be characterized by measurement of water quality parameters as follows:

(i) For all BWMS tests, salinity, temperature, and turbidity must be measured either continuously during or at the beginning, middle, and end of the period of ballast water uptake, as appropriate and practicable for the parameters to be measured.

(ii) Water quality parameters (e.g., dissolved and particulate organic material, pH, etc.) that may affect the efficacy of BWMS that make use of active substances or other processes, or water quality parameters identified by the manufacturer and/or the independent laboratory as being critical, must be measured either continuously during or at the beginning, middle, and end of the period of ballast water uptake, as appropriate and practicable for the parameters to be measured.

(h) Samples of ballast water must be collected from in-line sampling ports in accordance with the sampling specifications in the ETV Protocol.

(i) The following information must be documented during the entire period of BWMS testing operations conducted on the vessel:

(1) All ballast water operations, including volumes and locations of uptake and discharge.

(2) All test cycles, even those in which the BWMS failed to meet the BWDS, must be documented. The possible reasons for an unsuccessful test cycle must be investigated and included in the Test Report.

(3) All weather conditions and resultant effects on vessel orientation and vibration.

(4) Scheduled maintenance performed on the BWMS.

(5) Unscheduled maintenance and repair performed on the BWMS.

(6) Data for all engineering parameters monitored as appropriate to the specific BWMS.

(7) Consumption of all solutions, preparations, or other consumables necessary for the effective operation of the BWMS.

(8) All parameters necessary for tracking the functioning of the control and monitoring equipment.

(9) All instrument calibration methods and frequency of calibration.

(j) All measurements for numbers and viability of organisms, water quality parameters, engineering performance parameters, and environmental conditions must be conducted in accordance with the ETV Protocol. Where alternative methods are necessary, given constraints of the BWMS and/or the vessel, standard methods from recognized bodies such as EPA (in 40 CFR part 136), the International Standards Organization, or others accepted by the scientific community must be used, and must be accepted in advance by the Coast Guard.

(k) Test vessels discharging treated ballast water into the waters of the United States must be enrolled in the U.S. Coast Guard's Shipboard Technology Evaluation Program. Test vessels discharging treated ballast water into waters of other countries must secure all necessary approvals and permits required for discharges of treated ballast water.

§ 162.060–30 Testing requirements for ballast water management system (BWMS) components.

(a) The electrical and electronic components, including each alarm and control and monitoring device of the BWMS, must be subjected to the

following environmental tests when in the standard production configuration:

(1) A resonance search vertically up and down, horizontally from side to side, and horizontally from end to end, at a rate sufficiently low as to permit resonance detection made over the following ranges of oscillation frequency and amplitude:

(i) At 2 to 13.3 Hz with a vibration amplitude of +/− 1 mm.

(ii) At 13.2 to 80 Hz with an acceleration amplitude of +/− 0.7 g.

(2) The components must be vibrated in the planes specified in paragraph (a)(1) of this section at each major resonant frequency for a period of 4 hours.

(3) In the absence of any resonant frequency, the components must be vibrated in each of the planes specified in paragraph (a)(1) of this section at 30 Hz with an acceleration of +/− 0.7 g for a period of 4 hours.

(4) Components that may be installed in exposed areas on the open deck or in enclosed spaces not environmentally controlled must be subjected to a low temperature test of −25° C and a high temperature test of 55° C for a period of 2 hours at each temperature. At the end of each test, the components are to be switched on and must function normally under the test conditions.

(5) Components that may be installed in enclosed spaces that are environmentally controlled, including an engine room, must be subjected to a low temperature test at 0° C and a high temperature test at 55° C, for a period of 2 hours at each temperature. At the end of each test, the components are to be switched on and must function normally under the test conditions.

(6) Components must be switched off for a period of 2 hours at a temperature of 55° C in an atmosphere with a relative humidity of 90 percent. At the end of this period, the components must be switched on and must operate satisfactorily for 1 hour under the test conditions.

(7) Components that may be installed in exposed areas on the open deck must be subjected to tests for protection against heavy seas in accordance with IP 56 of publication IEC 60529 (incorporated by reference, *see* § 162.060–5) or its equivalent.

(8) Components must operate satisfactorily with a voltage variation of +/− 10 percent together with a simultaneous frequency variation of +/− 5 percent, and a transient voltage of +/− 20 percent together with a simultaneous transient frequency of +/− 10 percent and transient recovery time of 3 seconds.

(9) The components of a BWMS must be designed to operate when the vessel is upright and inclined at any angle of list up to and including 15° either way under static conditions and 22.5° under dynamic, rolling conditions either way and simultaneously inclined dynamically (pitching) 7.5° by bow or stern. Deviation from these angles may be permitted only upon approval of a written waiver submitted to the Coast Guard in accordance with § 162.060–10(b)(1) of this subpart, taking into consideration the type, size, and service conditions and locations of the vessels and operational functioning of the equipment for where the system will be used. Any deviation permitted must be documented in the type-approval certificate.

(10) The same component(s) must be used for each test required by this section and testing must be conducted in the order in which the tests are described, unless otherwise authorized by the Coast Guard.

(b) There must be no cracking, softening, deterioration, displacement, breakage, leakage, or damage of components or materials that affect the operation or safety of the BWMS after each test. The components must remain operable after all tests.

§ 162.060–32 Testing and evaluation requirements for active substances, preparations, and relevant chemicals.

(a) A ballast water management system (BWMS) may not use an active substance or preparation that is a pesticide unless the sale and distribution of such pesticide is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use in ballast water treatment prior to submission to the Coast Guard for approval of the BWMS. This requirement does not apply to the use of active substances or preparations generated solely by the use of a device (as defined under FIFRA) onboard the same vessel as the ballast water to be treated.

(b) The manufacturer of a BWMS that uses an active substance or preparation that is not a pesticide, or that uses a pesticide that is generated solely by the use of a device (as defined under FIFRA) onboard the same vessel as the ballast water to be treated, must prepare an assessment demonstrating the effectiveness of the BWMS for its intended use, appropriate dosages over all applicable temperatures, hazards of the BWMS, and means for protection of the environment, and public health. This assessment must accompany the application package submitted to the Coast Guard.

§ 162.060–34 Test Report requirements.

The Test Report prepared and submitted by an independent laboratory must be formatted as set out below. The Test Report must include, in addition to the information required by 46 CFR 159.005–11, information as follows:

(a) Summary statement with the following information:

(1) Name of the independent laboratory (IL) and all test facilities, subcontractors, and test organizations involved in testing the ballast water management system (BWMS).

(2) Name of manufacturer.

(3) BWMS model name.

(4) The IL's assessment that the BWMS—

(i) Has demonstrated, under the procedures and conditions specified in this subpart for both land-based and shipboard testing, that it meets the ballast water discharge standard requirements of 33 CFR part 151, subparts C and D;

(ii) Is designed and constructed according to the requirements of § 162.060–20 of this subpart;

(iii) Is in compliance with all applicable U.S. Environmental Protection Agency (EPA) requirements;

(iv) Operates at the rated capacity, performance, and reliability as specified by the manufacturer;

(v) Contains control and monitoring equipment that operates correctly;

(vi) Was installed in accordance with the technical installation specification of the manufacturer for all tests; and

(vii) Was used to treat volumes and flow rates of ballast water during the shipboard tests consistent with the normal ballast operations of the vessel.

(b) Executive summary.

(c) Introduction and background.

(d) Description of the BWMS.

(e) For each test conducted, summary descriptions of—

(1) Test conditions;

(2) Experimental design;

(3) Methods and procedures; and

(4) Results and discussion.

(f) Appendices, including—

(1) Complete Test Plans for land-based, shipboard, and component tests, for which an EPA Environmental Technology Verification (ETV) Verification Report produced in accordance with the ETV Protocol can substitute for the land-based test plan;

(2) Manufacturer supplied Operation, Maintenance, and Safety Manual that meets the requirements of § 162.060–38 of this subpart;

(3) Data generated during testing and evaluations;

(4) Quality Assurance and Quality Control records;

(5) Maintenance logs;

(6) Relevant records and tests results maintained or created during testing;

(7) Information on hazardous materials, active substances, relevant chemicals, and pesticides as detailed in paragraph (g) of this section; and

(8) Permits, registrations, restrictions, and regulatory limitations on use.

(g) The Test Report for a BWMS that may incorporate, use, produce, generate as a by-product and/or discharge hazardous materials, active substances, relevant chemicals and/or pesticides during its operation must include the following information in the appendix of the Test Report:

(1) A list of each active substance or preparation used in the BWMS. For each active substance or preparation that is a pesticide and is not generated solely by the use of a device onboard the same vessel as the ballast water to be treated, the appendix must also include documentation that the sale or distribution of the pesticide is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act for use for ballast water treatment. For all other active substances or preparations, the appendix must include documentation of the assessment specified in § 162.060–32(b) of this subpart.

(2) A list of all hazardous materials, including the applicable hazard classes, proper shipping names, reportable quantities as designated by 40 CFR 117.1, and chemical names of all components.

§ 162.060–36 Quality Assurance Project Plan (QAPP) requirements.

The approval testing and evaluation process must contain a rigorous Quality Assurance and Quality Control program consisting of a QAPP developed in accordance with ISO/IEC 17025:2005(E), as amended ISO/IEC 17025:2005/Cor.1:2006(E) (incorporated by reference, *see* § 162.060–5). The independent laboratory performing approval tests and evaluations is responsible for ensuring the appropriate Quality Assurance and Quality Control procedures are implemented.

§ 162.060–38 Operation, Maintenance, and Safety Manual (OMSM).

(a) Each OMSM must include the following sections:

(1) Table of contents.

(2) Manufacturer's information.

(3) Principles of ballast water management system (BWMS) operation, including—

(i) A complete description of the BWMS, methods and type(s) of technologies used in each treatment stage of the BWMS;

(ii) The theory of the BWMS' operation;

(iii) Any process or technology limitations of the BWMS;

(iv) Performance ranges and expectations of the system; and

(v) A description of the locations and conditions for which the BWMS is intended.

(4) Major system components and shipboard application, including—

(i) A general description of the materials used for construction and installation of the BWMS;

(ii) A list of each major component that may be fitted differently in different vessels with a general description of the different arrangements schemes;

(iii) Any vessel type(s), services, or locations where the BWMS is not intended to be used;

(iv) Maximum and minimum flow and volume capacities of the BWMS;

(v) The dimensions and weight of the complete BWMS and required connection and flange sizes for all major components;

(vi) A description of all actual or potential effects of the BWMS on the vessel's ballast water, ballast water tanks, and ballast water piping and pumping systems;

(vii) A list of all active substances, relevant chemicals, and pesticides generated or stored onboard the vessel to be used by the BWMS; and

(viii) Information on whether the BWMS is designed to be used in hazardous locations.

(5) System and major system component drawings as applicable, including—

(i) Process flow diagram(s) of the BWMS showing the main treatment processes, chemicals, and monitoring and control devices for the BWMS;

(ii) Footprint(s), drawings, and system schematics showing all major components and arrangements;

(iii) Drawings, containing a bill of materials, for the pumping and piping arrangements, and all related equipment provided with the BWMS;

(iv) All treatment application points, waste or recycling streams, and all sampling points integral to the BWMS;

(v) All locations and the sizes of all piping and utility connections for power, water, compressed air or other utilities as required by the BWMS;

(vi) Electrical wiring diagrams that include the location and electrical rating of power supply panels and BWMS control and monitoring equipment;

(vii) Unit(s), construction materials, standards, and labels on all drawings of equipment, piping, instruments, and appurtenances; and

(viii) An index of all drawings and diagrams.

(6) A description of the BWMS's control and monitoring equipment and how it will be integrated with the existing shipboard ballast system, including—

(i) Power demand;

(ii) Main and local control panels;

(iii) Power distribution system;

(iv) Power quality equipment;

(v) Instrumentation and control system architecture;

(vi) Process control description;

(vii) Operational set points, control loops, control algorithms, and alarm settings for routine maintenance, and emergency operations; and

(viii) All devices required for measuring appropriate parameters, such as pressure, temperature, flow rate, water quality, power, and chemical residuals.

(7) A description of all relevant standard operating procedures including, but not limited to—

(i) BWMS start-up and shutdown procedures and times;

(ii) Emergency shutdown and system by-pass procedures;

(iii) Requirements to achieve treatment objectives (e. g., time following initial treatment, critical dosages, residual concentrations, etc);

(iv) Operating, safety, and emergency procedures;

(v) BWMS limitations, precautions, and set points;

(vi) Detailed instructions on operation, calibration and zeroing of each monitoring device used with the BWMS; and

(vii) Personnel requirements for the BWMS, including number and types of personnel needed, labor burden, and operator training or specialty certification requirements.

(8) A description of the preventive and corrective maintenance requirements of the BWMS, including—

(i) Inspection and adjustment procedures;

(ii) Troubleshooting procedures;

(iii) An illustrated list of parts and spare parts;

(iv) A list of recommended spare parts to have during installation and operation of the BWMS;

(v) Use of tools and test equipment in accordance with the maintenance procedures; and

(vi) Point(s) of contact for technical assistance.

(9) A description of the health and safety risks to the personnel associated with the installation, operation, and maintenance of the BWMS including, but not limited to—

(i) The storage, handling, and disposal of any hazardous wastes;

(ii) Any health and safety certification/training requirements for personnel operating the BWMS; and

(iii) All material safety data sheets for hazardous or relevant chemicals used, stored, or generated by or for the system.

(b) If any information in the OMSM changes as a result of approval testing and evaluations, a new OMSM must be submitted.

§ 162.060–40 Requirements for Independent Laboratories (ILs).

(a) For designation by the Coast Guard as an independent laboratory for the evaluation, inspection, and testing of BWMS, an independent laboratory must demonstrate compliance with 46 CFR 159.010–3, 46 CFR 159.010–5, and 46 CFR 159.010–11 through 159.010–19.

(b) Each request for designation as an independent laboratory authorized under paragraph (a) of this section must be delivered to the Commandant (CG–521), Office of Design and Engineering Standards, U.S. Coast Guard, 2nd St. SW., Stop 7126, Washington, DC 20593–7126, in a written or electronic format.

(c) A list of independent laboratories designated by the Coast Guard under paragraph (b) of this section may be found at *http://cgmix.uscg.mil/,* or may be obtained by contacting the Commandant (CG–521), Office of Design and Engineering Standards, U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126.

§ 162.060–42 Responsibilities for Independent Laboratories (ILs).

(a) Upon receipt of a request from a manufacturer for approval testing of a ballast water management system (BWMS), the independent laboratory will conduct a readiness evaluation and determine the acceptability of the BWMS for testing.

(1) The readiness evaluation will examine the design and construction of the BWMS to determine whether there are any fundamental problems that might constrain the ability of the BWMS to manage ballast water as proposed by the manufacturer or to operate it safely onboard vessels. This evaluation must determine that the BWMS—

(i) Is designed and constructed according to the requirements of § 162.060–20 of this subpart;

(ii) Meets all existing safety and environmental regulatory requirements for all locations and conditions where the system will be operated during the testing and evaluation period; and

(iii) Meets the definition of a complete BWMS, as defined in this subpart, to include both ballast water treatment equipment and control and monitoring equipment. Only complete systems in the configurations in which they are intended for sale and use will be accepted for type-approval testing.

(2) The independent laboratory has the right to reject a proposed BWMS for type-approval testing if it does not satisfy the requirements in paragraph (b) of this section, is not deemed ready for approval testing or if, for technical or logistical reasons, that independent laboratory does not have the capability to accommodate the BWMS for testing or evaluation.

(3) Upon determination that the BWMS is ready for testing, the independent laboratory will notify the Commandant (CG–52), Commercial Regulations and Standards Directorate, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and provide the estimated date for commencement of type-approval testing.

(b) The independent laboratory must prepare a written Test Plan for each approval test to be completed, in accordance with § 162.060–24 of this subpart.

(c) Prior to land-based testing, the independent laboratory must ensure that the BWMS supplied by the manufacturer is set up in accordance with the BWMS' Operation, Maintenance, and Safety Manual (OMSM).

(d) Prior to shipboard testing, the independent laboratory must ensure that the BWMS supplied by the manufacturer is installed in a vessel in accordance with the OMSM and the vessel's administration's requirements and can be tested in accordance with § 162.060–28 of this subpart.

(e) Prior to commencing land-based or shipboard testing required under this subpart, the independent laboratory must require the BWMS manufacturer to sign a written statement to attest that the system was properly assembled and installed at the test facility or onboard the test vessel.

(f) The independent laboratory or its subcontractor(s) must conduct all approval testing and evaluations in accordance with testing requirements of this subpart and within the range or rated capacity of the BWMS.

(g) Upon completion of all approval tests and evaluations, the independent laboratory must follow the requirements of § 162.060–34 of this subpart and forward a complete Test Report to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102, or by email to *msc@uscg.mil.*

Dated: March 9, 2012.

Robert J. Papp Jr.,

Admiral, U.S. Coast Guard, Commandant.

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Federal Register

Vol. 77, No. 57

Friday, March 23, 2012

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FEDERAL REGISTER PAGES AND DATE, MARCH

12437–12720 1
12721–12980 2
12981–13180 5
13181–13482 6
13483–13958 7
13959–14264 8
14265–14470 9
14471–14678 12
14679–14950 13
14951–15230 14
15231–15554 15
15555–15932 16
15933–16130 19
16131–16424 20
16425–16650 21
16651–16906 22
16907–17320 23

CFR PARTS AFFECTED DURING MARCH

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.

1 CFR

Proposed Rules:
51 16761

3 CFR

Proclamations:
8778 13181
8779 13183
8780 13185
8781 13481
8782 13959
8783 14265
8784 16647
8785 16905

Executive Orders:
13601 12981
13602 16131
13603 16651

Administrative Orders:
Memorandums:
Memorandum of February 27, 2012 12721
Memorandum of February 28, 2012 12985
Memorandum of March 6, 2012 15231
Memorandum of March 16, 2012 16649
Notices:
Notice of March 2, 2012 13179
Notice of March 13, 2012 15229

4 CFR

28 15233

5 CFR

Ch. LXXXIII 15555
9301 15555
9302 15561

Proposed Rules:
7501 .....14997, 16761

7 CFR

2 .....14951, 14952
319 .....12437, 15933
457 13961
761 15933
762 15933
764 15933
765 15933
766 15933
1735 15564

Proposed Rules:
15 13980
20 .....13990, 16768
59 16951
211 13015
235 13015
930 .....12748, 13015
985 13019
1260 12752
1777 14307

9 CFR

77 16661

Proposed Rules:
92 15848
93 15848
94 15848
95 15848
96 15848
98 15848
307 15976
381 .....13512, 15976
500 13512

10 CFR

429 13888
430 13888

Proposed Rules:
50 .....16175, 16483
170 15530
171 15530
430 16183
431 .....13026, 16769
438 14482
719 12754
1046 13206

12 CFR

701 16425
760 16425
790 16425
1228 15566

Proposed Rules:
46 16484
252 13513
325 16484
611 16485
612 16485
619 16485
620 16485
630 16485
Ch. X 14700
1070 15286

14 CFR

23 16907
25 16910
39 .....12444, 12448,12450, 12989, 12991, 13187, 13191, 13193, 13483, 13485, 13488, 14679, 14681, 15939, 16135, 16137, 16139, 16143, 16145, 16147, 16151, 16155, 16428, 16430, 16432, 16661, 16914, 16916, 16917, 16919, 16921
67 .....13967, 16664
71 .....12992, 13195, 14269, 15575, 16434, 16668, 16669
95 14269
97 .....12452, 12454, 15576, 15577

1245 14686
Proposed Rules:
16 13027
39 ....12506, 12755, 12757, 13043, 13228, 13230, 13993, 14310, 14312, 14314, 14316, 15291, 15293, 15636, 15638, 15640, 15644, 15980, 16186, 16188, 16191, 16193, 16486, 16488, 16490, 16492, 16967, 16968
71 ....12759, 12760, 15295, 15297, 16783
91 14319

16 CFR

Proposed Rules:
305 15298

17 CFR

200 13490
Proposed Rules:
43 15460
162 13450
248 13450

18 CFR

39 16435
40 16435
806 14272
Proposed Rules:
35 16494
366 12760

19 CFR

10 15943
24 15943
162 15943
163 15943
178 15943

20 CFR

404 13968
416 13968
655 ....12723, 16157

21 CFR

20 16923
Ch. I 15961
211 16158
520 ....15960, 15961
558 14272
866 14272
882 16925
1301 15234
1309 15234
Proposed Rules:
Ch. 1 13513
20 16971
73 16784
172 13232
202 16973
866 16126
1308 12508

22 CFR

120 16592
123 16592
124 16592
126 ....16592, 16670
127 16592
129 16592

23 CFR

627 15250
Proposed Rules:
771 15310

26 CFR

1 13968
Proposed Rules:
1 ....12514, 13996, 14321, 15003, 15319, 15646
54 16501
301 15004

27 CFR

4 16671
9 16674

28 CFR

35 16163
36 16163
Proposed Rules:
35 16196
36 16196

29 CFR

552 14688
1910 13969
4022 15256
4044 ....14274, 14275, 15256
Proposed Rules:
1910 13997
2590 16501

31 CFR

321 16165
330 16165
560 16170
Proposed Rules:
Ch. X 13046

32 CFR

240 14955
311 ....15585, 15587, 15588, 16676
319 ....15590, 15591, 15592, 15593, 15594
322 ....15595, 15596
706 ....12993, 13970

33 CFR

100 ....12456, 14959, 14963, 14965, 15258, 15597, 15600, 15602, 15604
117 ....12475, 12476, 14689, 14690, 14968, 16927, 16928
151 17254
165 ....12456, 12994, 13971, 14276, 14471, 14970, 15260, 15261, 15263, 16170, 16929
Proposed Rules:
100 ....15006, 15320, 15323, 15647, 15981, 16974, 16978
114 16784
116 16784
117 12514
118 16784
165 ....13232, 13516, 13519, 13522, 13525, 14321, 14700, 14703, 15009, 15323, 16198

34 CFR

104 14972

36 CFR

242 12477
Proposed Rules:
7 12761
1195 14706

37 CFR

Proposed Rules:
201 15327

38 CFR

1 12997
17 13195
Proposed Rules:
17 ....12517, 12522, 13236, 14707
60 15650
61 12698

39 CFR

20 12724
111 15605
3020 13198
Proposed Rules:
111 12764

40 CFR

52 ....12482, 12484, 12487, 12491, 12493, 12495, 12652, 12674, 12724, 13491, 13493, 13495, 13974, 14604, 14691, 14697, 14862, 14976, 15263, 15607, 15608, 16676, 16937, 16940
59 14279
60 13977
70 ....15267, 16676
80 13009
81 16447
93 14979
131 13496
180 ....12727, 12731, 12740, 13499, 13502, 14287, 14291
261 12497
271 ....13200, 15273, 15966
300 15276
355 16679
721 13506
799 15609
1500 14473
1501 14473
1502 14473
1503 14473
1505 14473
1506 14473
1507 14473
1508 14473
Proposed Rules:
51 ....14226, 15656, 16981
52 ....12524, 12525, 12526, 12527, 12770, 13055, 13238, 14226, 14712, 14715, 15329, 15656, 15985, 16785, 16795
59 14324
60 ....13997, 14716
63 ....16508, 16987
70 ....14226, 16509, 16795
71 14226
82 16988
98 15590
141 15335
142 15335
158 16990
171 16990
180 ....15012, 15015
260 15336
261 15336
271 ....13248, 15343
300 ....14717, 15344
372 13061
745 16796

42 CFR

84 14161
424 14989
431 17144
435 17144
457 17144
Proposed Rules:
412 13698
413 13698
495 13698

44 CFR

64 13010
65 ....12501, 12746
Proposed Rules:
67 15664

45 CFR

144 16453
147 16453
153 17220
158 16453
Proposed Rules:
147 16501
170 13832

46 CFR

67 16172
162 17254
530 13508
531 13508
Proposed Rules:
98 14327
502 12528

47 CFR

1 16470
11 16688
51 14297
54 ....12784, 14297
Proposed Rules:
1 15665
22 15665
36 16900
54 12952
73 16800

48 CFR

Ch. 1 ....12912, 12947, 13952, 13956
1 ....12913, 12925, 14303
2 ....12913, 12925, 12937, 14303
4 ....12913, 13952, 14303
5 12927
6 ....12913, 14303
7 12925
8 12927
13 ....12913, 12930, 14303
14 ....12913, 14303
15 ....12913, 14303
16 ....12925, 12927
18 ....12913, 12927, 14303
19 ....12913, 12930, 12948, 14303
22 ....12933, 12935, 14303
25 ....12933, 12935, 13952, 14303
26 ....12913, 14303
31 12937
32 ....12925, 12937
33 ....12913, 14303
36 ....12913, 14303

38 12927
42 ....12913, 12925, 12948, 14303
45 12937
49 12937
50 12925
51 12937
52 ....12913, 12933, 12935, 12937, 12948, 13952, 14303
53 ....12913, 12937, 14303
212 14480
225 13013
252 13013
Proposed Rules:
252 14490
931 12754
952 12754
970 12754
Ch. 10 13069
2401 15681
2402 15681
2403 15681
2404 15681
2406 15681
2407 15681
2409 15681
2415 15681
2416 15681
2417 15681
2419 15681
2426 15681
2427 15681
2428 15681
2432 15681
2437 15681
2439 15681
2442 15681
2452 15681

49 CFR

191 16471
192 16471
193 16471
195 16471
214 13978
1244 15969
Proposed Rules:
571 15351

50 CFR

17 ....13394, 14914, 15617, 16324, 16712
100 12477
217 16718
300 16740
622 ....15284, 15916
648 ....14481, 14697, 16472, 16942
660 ....12503, 15973
679 ....12505, 13013, 13510, 14304, 14305, 14698, 14994, 15194, 16481, 16949, 16950
Proposed Rules:
13 ....14200, 15019, 15352
17 ....12543, 13248, 13251, 14062, 14200, 15019, 15352, 16512
23 ....14200, 15019
402 15352
600 15701
622 16991
635 ....15701, 15712
648 15991
679 ....13253, 15019

LIST OF PUBLIC LAWS

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S. 1134/P.L. 112–100
St. Croix River Crossing Project Authorization Act (Mar. 14, 2012; 126 Stat. 268)

S. 1710/P.L. 112–101
To designate the United States courthouse located at 222 West 7th Avenue, Anchorage, Alaska, as the James M. Fitzgerald United States Courthouse. (Mar. 14, 2012; 126 Stat. 270)

Last List March 15, 2012

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