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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 210

**[FNS–2011–0025]**

**RIN 0584–AE15**

## Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010; Correction

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Agriculture, Food and Nutrition Service (FNS), published a final rule in the **Federal Register** on January 3, 2014 (79 FR 325), concerning necessary changes made to the National School Lunch Program (NSLP) to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010. This document corrects/replaces an appendix that was added at the end of the rule that offered a detailed Regulatory Impact Analysis. All other information in this rule remains unchanged.

**DATES:** *Effective date:* This correction is effective March 2, 2014.

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302.

**SUPPLEMENTARY INFORMATION:** Accordingly, the final rule (FR Doc. 2013–31433) published at 79 FR 325 on January 3, 2014 is corrected as follows:

1. On pages 330 through 340, correct Appendix A to read as follows:

**Note:** The following appendix will not appear in the Code of Federal Regulations.

### Appendix A—Regulatory Impact Analysis

*Agency:* Food and Nutrition Service.

*Title:* Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010.

*Nature of Action:* Final Rule.

*Need for Action:* Section 201 of the Healthy Hunger-Free Kids Act of 2010 provides for a 6 cent per lunch performance-based reimbursement to SFAs that comply with the National School Lunch program (NSLP) and School Breakfast Program (SBP) meal standards that took effect on July 1, 2012. This rule finalizes the interim rule's regulatory framework for establishing initial school food authority (SFA) compliance with the new meal standards and for monitoring ongoing compliance. In addition, the final rule makes minor changes to the interim rule that are intended to facilitate the certification of SFA compliance with the meal patterns.

*Affected Parties:* The programs affected by this rule are the NSLP and the SBP. The parties affected by this regulation are local school food authorities, State education agencies and the USDA.

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### I. Background

The National School Lunch Program (NSLP) is available to over 50 million children each school day; an average of 31.6 million children per day ate a reimbursable lunch in fiscal year (FY) 2012. Schools that participate in NSLP receive Federal reimbursement and USDA Foods (donated commodities) for meals that meet program requirements.

Sections 4 and 11 of the Richard B. Russell National School Lunch Act (NSLA) govern the Federal reimbursement of school lunches. Reimbursement for school breakfasts is governed by Section 4(b) of the Child Nutrition Act. Reimbursement rates for both NSLP and SBP meals are adjusted annually for inflation under terms specified in Section 11 of the NSLA.

Federal reimbursement for program meals and the value of USDA Foods totaled $14.9 billion in FY 2012. Table 1 summarizes FNS projections of reimbursable meals served and the value of Federal reimbursements and USDA Foods through FY 2017.

The baseline for this analysis is the cost estimate published with the interim final rule.[1]

[1] **Federal Register**, Vol. 77, No. 82 pp. 25024–25036.

TABLE 1—PROJECTED NUMBER OF MEALS SERVED AND TOTAL FEDERAL PROGRAM COSTS [2]

[In billions]

| | Fiscal year | | | | |
|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 |
| NSLP: | | | | | |
| Lunches Served | 5.3 | 5.4 | 5.4 | 5.4 | 5.5 |
| Program Cost | $12.3 | $12.6 | $12.7 | $12.9 | $13.0 |
| SBP: | | | | | |
| Breakfasts Served | 2.3 | 2.4 | 2.4 | 2.5 | 2.5 |
| Program Cost | $3.6 | $3.8 | $4.0 | $4.1 | $4.2 |

Table 2 provides additional detail on the components of the school year (SY) 2012–2013 Federal reimbursement rates for lunches and breakfasts that meet program requirements. The figures in Table 2 exclude the 6 cents for meals that comply with the new meal patterns.

TABLE 2—FEDERAL PER-MEAL REIMBURSEMENT AND MINIMUM VALUE OF USDA FOODS, SY 2012–2013

| | Breakfast reimbursement | | Lunch reimbursement | | | | | Minimum value of donated foods |
|---|---|---|---|---|---|---|---|---|
| | Section 4(b) of Child Nutrition Act | | Section 4 NSLA | | Section 11 NSLA | Combined reimbursement, NSLA Sections 4 & 11 | | |
| | Schools in "Severe Need" | Schools not in "Severe Need" | SFAs that serve fewer than 60% of lunches free or at reduced price | SFAs that serve at least 60% of lunches free or at reduced price | | SFAs that serve fewer than 60% of lunches free or at reduced price | SFAs that serve at least 60% of lunches free or at reduced price | Additional Federal assistance for each NSLP lunch served |
| Contiguous States: | | | | | | | | |
| Free | $1.85 | $1.55 | $0.27 | $0.29 | $2.59 | $2.86 | $2.88 | $0.2275 |
| Reduced Price | 1.55 | 1.25 | 0.27 | 0.29 | 2.19 | 2.46 | 2.48 | 0.2275 |
| Paid | 0.27 | 0.27 | 0.27 | 0.29 | n.a. | 0.27 | 0.29 | 0.2275 |
| Alaska: | | | | | | | | |
| Free | 2.97 | 2.48 | 0.44 | 0.46 | 4.19 | 4.63 | 4.65 | 0.2275 |
| Reduced Price | 2.67 | 2.18 | 0.44 | 0.46 | 3.79 | 4.23 | 4.25 | 0.2275 |
| Paid | 0.41 | 0.41 | 0.44 | 0.46 | n.a. | 0.44 | 0.46 | 0.2275 |
| Hawaii: | | | | | | | | |
| Free | 2.16 | 1.81 | 0.32 | 0.34 | 3.03 | 3.35 | 3.37 | 0.2275 |
| Reduced Price | 1.86 | 1.51 | 0.32 | 0.34 | 2.63 | 2.95 | 2.97 | 0.2275 |
| Paid | 0.31 | 0.31 | 0.32 | 0.34 | n.a. | 0.32 | 0.34 | 0.2275 |

## II. Need for Action

Section 201 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) directs the USDA to issue regulations to update the NSLP and SBP meal patterns to align them with the *Dietary Guidelines for Americans* (DGA). The Department published a proposed rule in January 2011.[3] A final rule was published on January 26, 2012.[4] The new standards took effect on July 1, 2012, the start of SY 2012–2013.

HHFKA Section 201 also provides for a 6 cent increase to the USDA reimbursement for lunches served on or after October 1, 2012 that meet the new meal standards. The interim rule provided the regulatory structure necessary to establish initial school food authority (SFA) compliance with the new meal standards and to monitor ongoing compliance. This final rule responds to concerns raised by comments given in response to the interim rule.

## III. Key Provisions of the Interim Rule

The interim rule included provisions that govern initial certification of SFA compliance with the breakfast and lunch meal patterns that took effect on July 1, 2012, ongoing monitoring of compliance by State agencies, consequences for non-compliance, and administrative responsibilities of SFAs and State agencies. SFAs began receiving an additional 6 cents for each reimbursable lunch served on or after October 1, 2012 that was determined to comply with the new meal standards. Key provisions of the interim rule included:

- *Defining compliance:* SFAs must be compliant with breakfast and lunch meal pattern requirements to receive the performance-based 6 cent lunch reimbursement. All meal components must be present in appropriate quantities. The meals offered to students must also comply with sodium, calorie, saturated fat, and trans fat standards.
- *Initial certification of SFA eligibility for performance-based lunch reimbursement:* SFAs may be certified

[2] USDA projections of reimbursable lunches and breakfasts served, and total NSLP and SBP program costs, prepared for the FY 2014 President's Budget. NSLP program cost includes entitlement commodity assistance, but is not adjusted for the projected additional amount necessary to bring total commodity assistance up to 12 percent of the combined value of the Section 4 and 11 reimbursements as required by NSLA section 6(e) (42 U.S.C. 1755(e)). Note that the estimate for the cost of NSLP as given in on p. 175 of the 2014 President's budget appendix does not include estimated entitlement commodity assistance, unlike Table 1. In addition, although the USDA projections in the FY 2014 President's Budget included the cost of the extra 6 cents per meal (and assumed that all meals served would be eligible for the extra 6 cents per meal), the projections presented here do not include the value of the 6 cents—instead, program costs are presented as if no meals receive the 6 cents reimbursement, to provide a basis for comparison for the rest of the estimates in this RIA. The projected number of meals has changed from the estimated projections in the interim rule on account of updated projections provided in the 2014 President's Budget.

[3] **Federal Register**, Vol. 76, No. 9, pp. 2494–2570.

[4] **Federal Register**, Vol. 77, No. 17, pp. 4088–4167.

eligible for the performance-based lunch reimbursement in one of several ways. Procedures for submitting certification documentation will be developed by State agencies. Final certification decisions will also be made by State agencies. However, standards for certification and the materials used in the certification process will be developed by FNS and specified in guidance. The interim rule provided for the following certification methods:

i. Nutrient analysis: SFAs may submit to their State agency one week of each menu used by the SFA, along with the results of a nutrient analysis on each menu, and a menu worksheet.

ii. Practices and indicators documentation: SFAs may submit to their State agency responses to a series of questions on program operations, a week of each menu used by the SFA, and a menu worksheet.

iii. State agency reviews: SFAs may be certified in the process of a normal State agency administrative review. An SFA determined by the State agency to be compliant with all meal pattern and nutrient standards during an administrative review will be certified eligible for the performance-based lunch reimbursement.

• *Ongoing compliance:* SFAs must be held compliant with meal pattern and nutrient standards at subsequent State administrative reviews to remain eligible for the performance-based lunch reimbursement.

• *Consequences of non-compliance:* SFAs that are determined non-compliant with meal pattern or nutrient standards, either through State review of the SFAs' initial certification materials, or in an initial or future State administrative review, will not be eligible (or will lose eligibility) for the performance-based lunch reimbursement. State agencies that find SFAs to be non-compliant with meal pattern or nutrient standards must provide technical assistance and encourage SFA corrective action and re-application for certification.

• *State agency validation reviews:* State agencies must perform on-site validation reviews of a 25 percent random sample of certified SFAs during SY 2012–2013. Each validation review can substitute for an administrative review that the State agency would otherwise have to perform during SY 2012–2013.

• *Federal assistance to State agencies:* HHFKA Section 201 provided $50 million in each of the fiscal years 2012 and 2013 to assist States with training, technical assistance, certification, and oversight. As provided by HHFKA, the preamble to the interim rule specified that $3 million would be retained for Federal administration and $47 million would be distributed to the States in each of these 2 years.

## IV. Key Provisions of the Final Rule

This rule finalizes the provisions of the interim rule, including the procedures for performance-based certifications, required documentation and timeframes, validation reviews, compliance and administrative reviews, reporting and recordkeeping, and technical assistance, with a few revisions:

• This final rule amends the reporting requirement at 7 CFR 210.5(d)(2)(ii) to require that State agencies only include in their quarterly SFA performance-based certification report the total number of SFAs in the State and the names of certified SFAs. This represents a simplification of the reporting requirement from the interim rule. The change formalizes the simplification previously adopted by USDA and communicated to State agencies through Policy Memo SP 31–2012.

• This final rule at 7 CFR 210.7(d)(1) makes permanent a flexibility in requirements for weekly maximum grains and meat/meat alternates as originally outlined in Policy Memo SP 26–2013 and the flexibility for serving frozen fruit with added sugar as originally outlined in Policy Memo SP 20–2012. These changes make it easier for SFAs to meet the requirements of the school meals rule, which is a prerequisite for certification for the performance-based reimbursement.

## V. Addressing Comments on the Interim Rule and RIA

The interim rule generated about 200 comments. As noted in the preamble to the final rule, most of the comments pertained to either the school meals rule (e.g., commented on the new meal patterns) or to statutory requirements as set forth in HHFKA (e.g., commented on whether 6 additional cents are sufficient to cover the costs of the new meal patterns). As this RIA does not address the school meals rule and as FNS has no discretion to change the statutory requirements of the rule, this RIA will not address those comments.

### *A. Concerns About State Administrative Costs*

A few comments raised concerns about the cost of the States' quarterly reporting requirement on SFA certification. These comments viewed the reporting requirements as overly burdensome.

In response to these concerns, FNS decreased the amount of information required from States in the quarterly report, as noted above. This change decreases the estimated time it takes one State to prepare and submit a quarterly certification report from one hour under the interim rule to 15 minutes under this final rule. These reports will no longer be required once all SFAs have been certified to receive the performance-based reimbursement.

### *B. Concerns About Certification Costs*

A few comments raised concerns about State or SFA administrative costs to comply with the certification process and with a lack of adequate guidance and training of State agency officials by FNS. Other comments indicated that small SFAs do not have the staff resources, computers, or computer skills necessary to develop compliant menus or to complete the certification process. Some comments questioned whether the additional administrative costs are worth the additional 6 cent reimbursement, and they raised concerns about SFAs' abilities to meet certification requirements in a timely manner.

As noted in the preamble, FNS is encouraged by the number of SFAs that have already completed the certification process successfully. In October 2013, State agencies reported that, as of the end of June 2013, approximately 80 percent of all SFAs participating in the NSLP had submitted certification documentation to their respective State agency for review and certification, with more expected by the end of the school year. In addition, 90 percent of all lunches served in May 2013 received the extra 6 cent reimbursement.

With regard to the training provided to State agencies by FNS, we note that FNS led in-person training sessions with every State agency to assist them with the task of helping SFAs navigate the certification process. FNS also developed webinars, spreadsheet tools, documentation, and other training resources to assist State agencies and SFAs. All of these resources remain available on the FNS Web site.[5] The spreadsheet tools, in particular, are intended to assist SFAs that may not have the time or resources to develop or purchase their own software.[6] FNS

[5] See *http://www.fns.usda.gov/outreach/webinars/child_nutrition.htm* and *http://www.fns.usda.gov/cnd/Governance/Legislation/certificationofcompliance.htm.*

[6] Some comments indicated that the FNS-developed spreadsheet tools were difficult to work with. While FNS will not be changing the tool at this time, FNS has conducted several in-person trainings and webinars to assist State agencies and SFA having difficulties using the tools. Additionally, the FNS Web site lists other

Continued

recognizes, however, that some SFAs may continue to have difficulty with the process despite these resources. FNS is committed to assisting those SFAs, and the State agency staff who are working with them, by answering additional questions on the certification process as we receive them. FNS also encourages the States to provide additional assistance to SFAs that have not yet submitted requests for certification.

The final rule does not, however, change the requirements in the certification process. Consequently, we also make no fundamental change in the RIA concerning the costs of certification, although we do provide updated estimates of the cost of the interim rule based on the most recent data available. Nevertheless, we note that the other major change between the interim and final rule (i.e., making permanent the flexibility for weekly maximum grains and meat/meat alternates as original outlined in Policy Memo SP 26–2013 and the flexibility for serving frozen fruit with added sugar as originally outlined in Policy Memo SP 20–2012) should make it easier for SFAs to comply with the school meals rule (a prerequisite to becoming certified), though this does not change the certification process itself. As discussed in the preamble and below in Section VI.A.1., we do not find that making permanent these flexibilities negatively impacts the nutritional profile of NSLP meals.

## VI. Cost/Benefit Assessment

### *A. Final Rule*

#### 1. Benefits

The impact analysis for the interim rule[7] (and updated below) estimated that full compliance with the new meal patterns would increase SFA revenues by more than $300 million per year in the aggregate, as a result of increased transfers from the Federal government because of the performance-based reimbursement. Although this transfer from the Federal government to SFAs may be viewed as a transfer between members of society and not a direct benefit to society, the increased SFA revenues are expected to speed full SFA compliance with the new meal patterns, which likely offer a wide range of health benefits, as described in the final meal patterns rule.[8]

The changes contained in the final rule are expected to facilitate compliance with the meal patterns, allowing SFAs to take full advantage of the additional revenue that the interim final rule made available. Granting some flexibility on meat, grains, and frozen fruit is an effort by USDA to work with schools that are making serious efforts to comply with the rule's standards but are having some difficulty finding products that have been resized or reformulated specifically to meet the requirements of the rule. To the extent that a little flexibility at the margins encourages schools to plan menus that meet the new standards, students benefit from receiving meals that comply with the new standards rather than receiving meals that do not comply with the new standards.

The benefits to children who consume school meals that follow DGA recommendations are detailed in the impact analysis prepared for the final meal patterns rule.[9] As discussed in that document, the 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease.[10]

The link between poor diets and health problems such as childhood obesity are a matter of particular policy concern given their significant social and economic costs. Obesity has become a major public health concern in the U.S., second only to physical activity among the top 10 leading health indicators in the United States Healthy People 2020 goals. According to data from the National Health and Nutrition Examination Survey 2007–2008, 34 percent of the U.S. adult population is obese and an additional 34 percent are overweight.[11]

The trend towards obesity is also evident among children; 33 percent of U.S. children and adolescents are now considered overweight or obese,[12] with current childhood obesity rates four times higher in children ages 6 to 11 than they were in the early 1960s (19 vs. 4 percent), and three times higher (17 vs. 5 percent) for adolescents ages 12 to 19.[13] These increases are shared across all socio-economic classes, regions of the country, and have affected all major racial and ethnic groups.[14]

Excess body weight has long been demonstrated to have health, social, psychological, and economic consequences for affected adults.[15] Recent research has also demonstrated that excess body weight has negative impacts for obese and overweight children. Research focused specifically on the effects of obesity in children indicates that obese children feel they are less capable, both socially and athletically, less attractive, and less worthwhile than their non-obese counterparts.[16]

Further, there are direct economic costs due to childhood obesity; $237.6 million (in 2005 dollars) in inpatient costs,[17] and annual prescription drug, emergency room, and outpatient costs of $14.1 billion.[18]

Childhood obesity has also been linked to cardiovascular disease in children as well as in adults. Freeman, Dietz, Srinivasan, and Berenson found that ''compared with other children, overweight children were 9.7 times as likely to have 2 [cardiovascular] risk factors and 43.5 times as likely to have 3 risk factors'' (p. 1179) and concluded that ''[b]ecause overweight is associated

commercially available tools that SFAs may find more appropriate or helpful.

[7] **Federal Register**, Vol. 77, No. 82, pp. 25024–25036.

[8] **Federal Register**, Vol. 77, No. 17, pp. 4088–4167.

[9] **Federal Register**, Vol. 77, No. 17, pp. 4088–4167.

[10] Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, p. B1–2. (*http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm*).

[11] C.L. Ogden and M.D. Carroll (2010), ''Prevalence of Overweight, Obesity, and Extreme Obesity among Adults: United States, Trends 1960–1962 through 2007–2008,'' National Center for Health Statistics, June 2010, available online at *http://www.cdc.gov/nchs/data/hestat/obesity_adult_07_08/obesity_adult_07_08.pdf.*

[12] M.A. Beydoun and Y. Wang (2011), ''Socio-demographic disparities in distribution shifts over time in various adiposity measures among American children and adolescents: What changes in prevalence rates could not reveal,'' *International Journal of Pediatric Obesity,* 6:21–35, available online at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3005993/.*

[13] Institute of Medicine (2007), *Progress in Preventing Childhood Obesity: How do we Measure Up? Committee on Progress in Preventing Childhood Obesity,* edited by J.P. Koplan, C.T. Liverman, V.I. Kraak, and S.L. Wisham, Washington, DC: The National Academies Press, p. 24.

[14] S.J. Olshansky, D.J. Passaro, R.C. Hershow, J. Layden, B.A. Carnes, J. Brody, L. Hayflick, R.N. Butler, D.B. Allison, and D.S. Ludwig (2005). ''A Potential Decline in Life Expectancy in the United States in the 21st Century,'' *The New England Journal of Medicine,* 352:1138–1145.

[15] J. Guthrie, C. Newman, and K. Ralston (2009), ''USDA School Meal Programs Face New Challenges,'' *Choices: The Magazine of Food, Farm, and Resource Issues,* 24 (available online at *http://www.choicesmagazine.org/magazine/print.php?article=83*); and Y. Wang, M.A. Beydoun, L. Liang, B. Cabellero and S.K. Kumanyika (2008), ''Will all Americans Become Overweight or Obese? Estimating the Progression and Cost of the US Obesity Epidemic,'' *Obesity,* 16:2323–2330.

[16] A. Riazi, S. Shakoor, I. Dundas, C. Eiser, and S.A. McKenzie (2010), ''Health-related quality of life in a clinical sample of obese children and adolescents,'' *Health and Quality of Life Outcomes,* 8:134–139.

[17] L. Trasande, Y. Liu, G. Fryer, and M. Weitzman (2009), ''Trends: Effects of Childhood Obesity on Hospital Care and Costs, 1999–2005,'' *Health Affairs,* 28:w751–w760.

[18] J. Cawley (2010), ''The Economics of Childhood Obesity,'' *Health Affairs,* 29:364–371, available online at *http://content.healthaffairs.org/content/29/3/364.full.pdf.*

with various risk factors even among young children, it is possible that the successful prevention and treatment of obesity in childhood could reduce the adult incidence of cardiovascular disease'' (p. 1175).[19] It is known that overweight children have a 70 percent chance of being obese or overweight as adults. However, the actual causes of obesity have proven elusive.[20] While the relationship between obesity and poor dietary choices cannot be explained by any one cause, there is general agreement that reducing total calorie intake is helpful in preventing or delaying the onset of excess weight gain.

There is some recent evidence that food standards are associated with an improvement in children's dietary quality:

• Taber, Chriqui, and Chaloupka compared calorie and nutrient intakes for California high school students—with food standards in place—to calorie and nutrient intakes for high school students in 14 States with no food standards.[21] They concluded that California high school students consumed fewer calories, less fat, and less sugar at school than students in other States. Their analysis ''suggested that California students did not compensate for consuming less within school by consuming more elsewhere'' (p. 455). The consumption of fewer calories in school 'suggests that competitive standards ''. . . may be a method of reducing adolescent weight gain'' (p. 456).

• A study of competitive food policies in Connecticut concluded that ''removing low nutrition items from schools decreased students' consumption with no compensatory increase at home.'' [22]

• Similarly, researchers for Healthy Eating Research and Bridging the Gap found that ''[t]he best evidence available indicates that policies on snack foods and beverages sold in school impact children's diets and their risk for obesity. Strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools are associated with lower proportions of overweight or obese students, or lower rates of increase in student BMI.'' [23]

Pew Health Group and Robert Wood Johnson Foundation researchers noted that the prevalence of children who are overweight or obese has more than tripled in the past three decades,[24] which is of particular concern because of the health problems associated with obesity. In particular, researchers found an increasing number of children are being diagnosed with type 2 diabetes, high cholesterol, and high blood pressure. These researchers further observed that children with low socioeconomic status and black and Hispanic children are at a higher risk of experiencing one or more of these illnesses (pp. 39–40, 56). Their analysis also noted that: [T]here is a strong data link between diet and the risk for these chronic diseases. Given the relationship between childhood obesity, calorie consumption, and the development of chronic disease risk factors at a young age, this report proposes that a national policy could alter childhood and future chronic disease risk factors by reducing access to certain energy-dense foods in schools. To the extent that the national policy results in increases in students' total dietary intake of healthy foods and reductions in the intake of low-nutrient, energy-dense foods, it is likely to have a beneficial effect on the risk of these diseases. However, the magnitude of this effect would be proportional to the degree of change in students' total dietary intake, and this factor is uncertain (p. 68).

In summary, the most current, comprehensive, and systematic review of existing scientific research concluded that foods standards can have a positive impact on reducing the risk for obesity-related chronic diseases. Because the factors that contribute both to overall food consumption and to obesity are so complex, FNS has not been able to define a level of disease or cost reduction that is attributable to the changes in foods resulting from implementation of this rule. USDA is unaware of any comprehensive data allowing accurate predictions of the effect of increasing the flexibility in meeting certain dietary requirements by SFA's to certify compliance for the National program and subsequent changes in consumer choice and, especially among children.

Some researchers have suggested possible negative consequences of regulating nutrition content in school foods. They argue that not allowing access to low nutrient, high calorie snack foods in schools may result in overconsumption of those same foods outside the school setting (although as noted earlier, Taber, Chriqui, and Chaloupka concluded overcompensation was not evident among the California high school students in their sample).

The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered to the extent that this rule contributes to full compliance with the meal patterns by all SFAs.

The changes adopted in the final rule (summarized in Section IV) are intended to facilitate SFA compliance with the meal pattern requirements and reduce State agency reporting and recordkeeping burden. By making permanent the flexibility on weekly maximum servings of grains and meat/meat alternates, and by allowing frozen fruit with added sugar to credit toward the meal pattern requirement for fruit, the final rule will make it easier for some SFAs to plan menus that comply with the meal pattern requirements.[25]

The added flexibility on weekly maximum servings of grains and meat/meat alternates will benefit SFAs who may continue to rely on prepared foods or recipes that ensure compliance with daily and weekly minimum required quantities of servings of grains and meat/meat alternates but may exceed weekly maximum limits on servings of grains and meat/meat alternates in some weeks. However, because the meal patterns' weekly calorie requirements remain in place, the added flexibility on grains and meat/meat alternates is unlikely to have a significant effect on the overall quantity of food served, the

[19] D.S. Freeman, W.H. Dietz, S.R. Srinivasan, and G.S. Berenson (1999), ''The Relation of Overweight to Cardiovascular Risk Factors Among Children and Adolescents: The Bogalusa Heart Study,'' *Pediatrics,* 103:1175–1182.

[20] ASPE, Health & Human Services (No Date), ''Childhood Obesity,'' Assistant Secretary for Planning and valuation, U.S. Department of Health & Human Services, available online at *http://aspe.hhs.gov/health/reports/child_obesity.*

[21] D.R. Taber, J.F. Chriqui, and F.J. Chaloupka (2012), ''Differences in Nutrient Intake Associated With State Laws Regarding Fat, Sugar, and Caloric Content of Competitive Foods,'' *Archives of Pediatric & Adolescent Medicine,* 166:452–458.

[22] M.B. Schwartz, S.A. Novak, and S.S. Fiore (2009), ''The Impact of Removing Snacks of Low Nutritional Value from Middle Schools,'' *Health Education & Behavior,* 36:999–1011, p. 999.

[23] Healthy Eating Research and Bridging the Gap (2012), ''Influence of Competitive Food and Beverage Policies on Children's Diets and Childhood Obesity,'' p. 3, available online at *http://www.healthyeatingresearch.org/images/stories/her_research_briefs/Competitive_Foods_Issue_Brief_HER_BTG_7-2012.pdf.*

[24] Pew Health Group and Robert Wood Johnson Foundation (2012), *Heath Impact Assessment: National Nutrition Standards for Snack and a la Carte Foods and Beverages Sold in Schools,* available online at *http://www.pewhealth.org/uploadedFiles/PHG/Content_Level_Pages/Reports/KS%20HIA_FULL%20Report%20062212_WEB%20FINAL-v2.pdf.*

[25] As explained in this section and in the preamble to the rule, making permanent this flexibility does not compromise the nutritional profile of school meals. IOM's recommendations were to serve food in minimum amounts subject to maximum calorie limits; the additional flexibility allowed by these provisions is still subject to the maximum calorie limits for school meals.

cost of acquiring that food, or the nutritional profiles of the meals served.

Allowing frozen fruit with added sugar to credit toward the meal patterns' fruit requirement also provides SFAs greater flexibility in purchasing foods for use in the school meal programs. Permitting schools to make use of a wider range of currently available frozen fruit products may reduce the administrative costs of finding and acquiring compliant foods for use in the meal programs. But, like the grains and meat/meat alternate provision, because the calorie limits are still in place, allowing added sugar in frozen fruit products will not undermine the updated nutrition standards.[26]

It is important to emphasize that menus developed by SFAs that are certified eligible for the additional 6 cent reimbursement must meet all of the minimum food group requirements contained in the final school meals rule, whether or not those SFAs take advantage of the added flexibilities of this rule. In addition, all SFAs are held to the same maximum calorie standards contained in the final school meals rule. Those standards are not meal-based. Instead, SFA compliance with the food group standards is assessed by comparing the weighted average amounts served across all meals served per day or in an entire week. Children in SFAs that are certified compliant under the modified standards of this rule will be served meals that satisfy the same minimum requirements as meals served in SFAs that were certified compliant under the original terms of the final school meals rule. Even in the absence of the flexibility added by this rule, the amount of meat and grains served in individual meals will vary significantly from the weighted average minimum and maximum amounts required over the course of a day or week. The changes in this rule recognize that additional flexibility on the upper end of the required range for meat and grains allows SFAs to use products that were formulated prior to the final school meal rule standards and to satisfy student demand. This rule does not offer SFAs a way to reduce the minimum amounts served from any of the food groups emphasized by the final school meal rule. And because this rule does not modify the final school meal rule's maximum calorie requirements, the new flexibility is limited and does not weaken the school meal standards' focus on childhood obesity.[27]

The final school meal rule establishes a primarily food-based set of requirements; these are designed to comply with the recommendations of the DGAs regarding the consumption of a variety of foods from key food groups. The school meal rule sets just a handful of macronutrient standards (for calories, saturated fat, sodium, and trans fat). The changes contained in this rule require SFAs to serve meals that satisfy the same minimum requirements from each of the food groups identified in the final school meal rule without relaxing any of that rule's macronutrient standards. In short, this rule's additional flexibility, designed to make it marginally easier to meet compliance with the new meal standards.

Schools that adopt healthier food standards for their school lunch programs will improve the dietary intake for children at school and make it more likely that those students will have improved health outcomes. However, by allowing greater flexibility in meeting the school lunch dietary standards, it may be that some compliant SFAs relax their implementation of those guidelines somewhat.

USDA has not quantified what changes may result to the overall nutritional content of SFAs availing themselves of those flexibility provisions. There are relatively few SFAs (relative to the total number of SFAs complying with school lunch dietary guidelines) that would significantly change the dietary composition of their school lunch program one way or the other. Those two effects (described above) are offsetting and so the net effects of these changes on the benefits to school children are likely to be marginal relative to the overall benefits afforded by the dietary standards.

Because of the macronutrient requirement is not adjusted, any resulting changes to the nutritional quality of the NSLP and SBP meals served by SFAs are expected to marginal, and so there would likely be few changes to the benefits to children relative to the final school meal rule or to the interim rule on certification for the 6 cent reimbursement.

2. Costs and Transfers

The baseline for our estimate of the cost of the final rule is the estimate for the interim final rule, which we update below using the latest President's Budget projections and preliminary data on certifications for the performance-based reimbursement.

The provisions in the final rule will likely result in a small increase in cost to the Federal Government (as a result of a transfer of Federal funds in the form of additional performance-based reimbursements to a small number of schools receiving the performance-based reimbursement that might have otherwise not received it), though we expect this potential increase to fall within the cost range estimated for the interim final rule, as updated below.

The effect of the provisions in the final rule (i.e. increased flexibility on grains, meats, and frozen fruits with added sugar) is to reduce the costs of compliance for the small minority of SFAs that would otherwise not have been certified compliant with the new meal standards by the end of SY 2013–2014. The policy memos issued by FNS in September 2012 and February 2013 had already extended these provisions through the end of SY 2013–2014.

These provisions are essentially administrative efficiency measures that will reduce meal pattern compliance costs at the margin for some SFAs; the provisions are not expected to have a significant effect on food costs. Since these provisions are options (not requirements)[28] and because we have no data on how many schools might avail themselves of either of these options, we do not estimate those cost savings in this analysis.

Given the assumptions (explained in more detail elsewhere in this analysis) about a phased certification process for some SFAs, the estimated cost of Federal performance-based

[26] We note that, in SY 2009–2010, frozen fruit accounted for only 17% of the fruit used by U.S. schools. See p. 83 of USDA/FNS, School Food Purchase Study III (2012), available online at *http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SFSPIII_Final.pdf*.

[27] The final rule's flexibility on sugar contained in frozen fruit is also constrained by the retention of the interim rule's calorie restrictions. Because the interim rule already allowed for added sugar in canned fruit, the final rule's modification of the frozen fruit standard is primarily a means to widen the selection of processed fruit available to SFAs under nutrient standards that are comparable to the standards already allowed under the interim rule for other processed fruit. In the absence of the final rule provision on frozen fruit with added sugar, SFAs remained free to serve canned fruit in light syrup rather fresh or processed fruit without added sugar.

[28] In general, we assume that optional provisions do not increase costs. We make this assumption because SFAs, State agencies, or other affected parties that now have additional options will choose to take advantage of the option if it is advantageous (i.e. cost-saving, more efficient, less burdensome, etc.) for them to do so; if it is not advantageous for them to do so, they do not have to implement the option, and therefore, their costs would not change from our baseline. For these reasons, providing additional options will almost certainly lower costs and/or increase benefits for at least some subset of affected parties and will not increase costs for any party without providing at least offsetting benefits—though we do not attempt to quantify these savings, efficiencies, and benefits, due to the speculative nature of such an estimate.

reimbursements (and the value of additional SFA revenue) is $1.54 billion through FY 2017 (1 percent less than the $1.55 billion estimated with full implementation).

To the extent that additional flexibilities are afforded to SFAs, this rule could result in marginally lower costs to SFAs relative to the interim final rule baseline. USDA has not quantified those changes as there are relatively few SFAs (relative to the total number of SFAs complying with school lunch dietary guidelines) that would significantly change the dietary composition of their school lunch program one way or the other.

The added flexibility on weekly maximum servings of grains and meat/meat alternates could benefit SFAs who may continue to rely on prepared foods or recipes that ensure compliance with daily and weekly minimum quantities but may exceed weekly maximums in some weeks. That provision may reduce the administrative costs of meal planning for some SFAs, and may reduce the costs associated with modifying recipes or finding new prepared foods in the market with slightly different formulations than products currently purchased.

Because the flexibility on grains, meat/meat alternates, and frozen fruit had previously been extended by FNS through SY 2013–2014, the effect of these provisions on the initial certification of SFAs for the performance-based reimbursement is expected to be very small. Administrative data on certifications approved or pending through May 2013 indicate that only a small minority of SFAs are likely to remain uncertified by the end of SY 2013–2014. For those SFAs, these provisions may help reduce the costs of certification after that time.[29] For all other SFAs, these provisions will make it marginally easier to maintain compliance with daily and weekly meal pattern requirements, a necessary condition for continued receipt of the performance-based reimbursement. We expect these provisions to generate a small but uncertain cost savings for SFAs through a small reduction in SFA compliance costs.

The rule also finalizes the change in State agency quarterly reporting requirement on SFA certification. That change, previously adopted through Policy Memo SP–31–2012, reduces quarterly State agency reporting burden to an estimated 15 minutes per quarter per State agency.[30] The last change, contained in the preamble to the final rule, will eliminate the requirement that State agencies submit quarterly reports on SFA certification for the performance-based rate increase once all SFAs have been certified. The administrative savings from this provision is minimal.[31]

*B. Updated Analysis of Interim Rule Effects*

The analysis provided below updates a similar analysis prepared for the interim rule impact analysis.[32] We update the figures here using data on actual SFA certifications that were not available when the interim rule was published in April 2012, as well as new financial and participation projections provided in the 2014 President's Budget. The data collected since April 2012 allows for a more precise estimate of SFA certifications and receipt of performance-based reimbursements in FY 2013 and projections for fiscal years 2014 through 2017. This analysis is presented for the information of those interested in the effects of the rule on SFAs, State agencies and USDA. It provides estimates of the economic impact of the rule overall, not just the incremental effects of the final rule.

In Table 3, two estimates are provided in recognition of the uncertainty of how quickly SFAs will be determined compliant with the new meal standards and, therefore, how soon they will be eligible for the performance-based rate increase. Data available as of October 2013 shows that 73% of meals served in FY2013 have been certified for the performance-based reimbursement as of July 2013, with 90% of meals served in May 2013 certified as of July 2013. Given the rate of retroactive certification of SFAs and meals, our upper bound (and also primary) estimate assumes that all SFAs will be certified by the end of FY 2013 and that 80% of the lunches served in FY 2013 will eventually be certified to receive the additional 6 cent reimbursement.

As of October 2013, administrative data that indicate that 80 percent of SFAs had been certified or had submitted certification documentation to their respective State agency for review and certification by the end of June 2013. It assumes that the remaining 20 percent of SFAs will be certified (or certified retroactively) in the remaining months of the fiscal year. Administrative data also indicate that 90 percent of meals served in May 2013 qualified for the extra 6 cent reimbursement, and that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns.[33]

Our alternate scenario relies on administrative data on certifications through the first several months of SY 2012–2013 to estimate the revenues and costs of a phased implementation that assumes full compliance during FY 2014. For both estimates, we assume that 80% of the meals served in FY 2013 will qualify for the additional 6 cent reimbursement; in the alternate estimate, we assume 95% of meals will qualify in FY 2014, and 100% will qualify in FY 2015 and beyond. In addition, in this second scenario we assume that roughly 90 percent of SFAs will be found compliant by the end of FY 2013, or certified compliant retroactively to the start of FY 2014. We further assume that the remaining 10% of SFAs will be certified sometime during FY 2014, and that 95% of FY 2014 lunch reimbursements will include the performance-based 6 cents. We assume that 100 percent of SFAs (and, consequently, 100 percent of meals) will be certified to receive the performance-based reimbursement in FY 2015 and beyond.

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[29] As we note above, approximately 80 percent of SFAs had submitted documentation to their respective State agencies for review and certification as of June 2013. Administrative data also show that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns. With or without the changes contained in the final rule, State agency technical assistance will likely concentrate on this subset of uncertified SFAs during SY 2013–2014. Those efforts are likely to substantially reduce the number of non-certified SFAs by the end of SY 2013–2014. It is that remaining subset of SFAs that may benefit most from the permanent extension of the grains, meat/meat alternate, and frozen fruit policy changes contained in the final rule.

[30] Estimate developed for Paperwork Reduction Act reporting and contained in the preamble to the rule. Because this change was already adopted by USDA through a policy memo, the reduction in burden for State agencies is part of our baseline, and the formalization of that policy by the final rule does not further reduce State agency reporting costs.

[31] Although the relative burden decrease of 75% seems substantial, the absolute burden decrease (as measured in the dollar value of State agency staff time) is only about $4,000 per year across the entire United States.

[32] **Federal Register**, Vol. 77, No. 82, pp. 25024–25036.

[33] I.e., the number of meals certified for the performance-based reimbursement in the early months of the school year increases with each additional month of administrative data reported by the States.

**Table 3: Summary of Revenue and Cost Impact, Updated Estimate for Interim Rule, FY 2013-2017[34] (millions)**

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | Total (FY 2013-2017) |
| **Upper bound (primary) estimate** | | | | | | |
| **SFAs and State agencies** | | | | | | |
| SFA revenue (NSLP reimbursements) | $255.3 | $321.3 | $323.3 | $325.4 | $327.6 | **$1,553.0** |
| Federal transfer to States for technical assistance* | 47.0 | 0.0 | 0.0 | 0.0 | 0.0 | **$47.0** |
| State agency and SFA reporting and recordkeeping* | -2.9 | ** | ** | ** | ** | **-$2.9** |
| **Federal** | | | | | | |
| Technical assistance to States | -$50.0 | $0.0 | $0.0 | $0.0 | $0.0 | **-$50.0** |
| NSLP reimbursements | -255.3 | -321.3 | -323.3 | -325.4 | -327.6 | **-$1,553.0** |
| **Alternate estimate** | | | | | | |
| **SFAs and State agencies** | | | | | | |
| SFA revenue (NSLP reimbursements) | $255.3 | $305.2 | $323.3 | $325.4 | $327.6 | **$1,536.9** |
| Federal transfer to States for technical assistance* | 47.0 | 0.0 | 0.0 | 0.0 | 0.0 | **$47.0** |
| State agency and SFA reporting and recordkeeping* | -2.5 | -0.4 | ** | ** | ** | **-$2.9** |
| **Federal** | | | | | | |
| Technical assistance to States | -$50.0 | $0.0 | $0.0 | $0.0 | $0.0 | **-$50.0** |
| NSLP reimbursements | -255.3 | -305.2 | -323.3 | -325.4 | -327.6 | **-$1,536.9** |

* Indicates a net social cost (including cost reductions); all other table entries are transfers between members of society.

** Estimated at less than $50,000.

Note: Positive values indicate increase in revenues; negative values indicate increase in costs.

1. Methodology

The estimated increase in the Federal cost of NSLP reimbursements is a straightforward calculation of the number of meals that are certified in compliance with the new meal standards times 6 cents (adjusted for inflation). This approach applies the additional 6 cents to USDA's baseline projection of lunches. The 6 cents is subject to the same inflation adjustment applied to the Section 4 and Section 11 components of the lunch reimbursement, rounded down to the nearest cent.[35] The interim rule inflates the 6 cents separately from the Section 4 or Section 11 rates. Given our projected increase in the CPI Food Away from Home, we estimate that the 6 cents will remain unchanged through FY 2017.[36]

Full Implementation by October 1, 2013

If all SFAs are certified for the performance-based 6 cent lunch rate increase as of October 1, 2013 (as assumed in the primary estimate), then the Federal cost and SFA revenue increase from FY 2013 through FY 2017

[34] We note that the estimates in this table are largely consistent with the estimates published with the interim rule; the main differences are caused by (1) the exclusion of FY 2012 and the inclusion of FY 2017 in the above table, and (2) a small downward revision in the estimated number of lunches served in future Fiscal Years, resulting in an decrease in estimated Federal transfers to SFAs for reimbursable lunches. We also note that the 2014 President's Budget likely overstates the final number of lunches that will be served in FY 2013, but we use the 2014 President's Budget as our basis of analysis for consistency's sake, both for internal consistency and consistency with past estimates.

[35] The fractional cents are not lost; they are added back to the base rate before applying the next year's inflation adjustment.

[36] The CPI Food Away From Home Index is the factor specified by NSLA Section 11 to adjust the reimbursement rates for school lunch and breakfast. Our projected values for this index are those prepared by OMB for use in the 2014 President's Budget.

would total about $1.55 billion. This upper bound estimate (our primary estimate) assumes full compliance with the new breakfast and lunch meal patterns' food group and nutrient requirements by the start of (or retroactive to the start of) SY 2013–2014.

The added revenue will be distributed across SFAs in proportion to the number of reimbursable lunches served. Because students eligible for free or reduced-price meals participate in the school meals programs at higher rates than other students, revenue per enrolled student will tend to be higher in SFAs with the greatest percentage of free and reduced-price certified students. However, eligibility for free or reduced price meals is not the only factor that impacts student participation in the NSLP. Other factors that vary by SFA include the distribution of students by grade level, prices charged for paid lunches, availability of offer vs. serve (in elementary and middle schools), the variety of entrees offered, and school geography.[37]

The data available do not allow us to account for each of those variables here. Instead we estimate in Table 4 the distribution of revenue across SFAs under the assumption that revenue is proportional to enrollment.[38]

[37] *School Nutrition Dietary Assessment Stdy–III,* Vol. 2, Table IV.2, Mathematica Policy Research, Inc. for U.S. Department of Agriculture, Food and Nutrition Service, 2007, available online at *http://www.fns.usda.gov/ora/MENU/Published/CNP/cnp.htm.*

[38] Table 4 is based on SY 2009–2010 data for public local educational agencies (LEAs) from the Common Core of Data, U.S. Department of Education, National Center for Education Statistics, *http://nces.ed.gov/ccd/.*

**Table 4: Estimated Distribution of Additional Revenue from Performance-Based Rate Increase[39]**

| | Percent of Students | Share of New Revenue: Primary Estimate, FY 2013-17 (if proportional to enrollment) |
|---|---|---|
| **LEA enrollment** | | |
| 1 - 500 | 3% | $42.8 |
| 501 - 1,000 | 4% | 62.3 |
| 1,001 - 2,500 | 11% | 172.4 |
| 2,501 - 5,000 | 14% | 223.4 |
| 5,001 - 10,000 | 15% | 229.8 |
| 10,001 - 25,000 | 19% | 290.0 |
| 25,001 - 50,000 | 15% | 226.2 |
| 50,001 + | 20% | 306.3 |
| All | 100% | $1,553.0 |
| **Census region** | | |
| Northeast | 16% | $251.8 |
| Midwest | 21% | 332.7 |
| South | 37% | 581.7 |
| West | 24% | 370.6 |
| Territories | 1% | 16.2 |
| All | 100% | $1,553.0 |
| **Urbanicity** | | |
| City | 31% | $479.5 |
| Suburb | 38% | 584.8 |
| Town | 12% | 183.3 |
| Rural | 20% | 305.4 |
| All | 100% | $1,553.0 |
| **Percent of enrollment certified for free or reduced price school meals** | | |
| 0.0 - 19.9 % | 14% | $218.2 |
| 20.0 - 39.9 % | 23% | 361.1 |
| 40.0 - 59.9 % | 33% | 507.6 |
| 60.0 - 79.9 % | 23% | 350.5 |
| 80.0 - 100.0 % | 7% | 115.5 |
| All | 100% | $1,553.0 |

Phased Implementation Within 2 Years

As we note above, State agencies reported in October 2013 that more than 80 percent of all SFAs participating in the NSLP had submitted certification documentation to their respective State agency for review and certification by the end of June 2013, and that 90 percent of meals qualified for the higher reimbursement in May. Administrative data also show that many SFAs are being certified retroactively as the processing of applications and approval of certification requests catch up with SFAs' documented compliance with the new meal patterns. Consequently, we feel comfortable assuming for this alternate analysis that roughly 90 percent of SFAs will be found compliant by the end of FY 2013, or certified compliant retroactively to the start of FY 2014.

We further assume that the remaining 10% of SFAs will be certified sometime during FY 2014, and that 95% of FY 2014 lunch reimbursements will include the performance-based 6 cents. We assume that 100 percent of SFAs

[39] The distribution of States by Census region was taken from *http://www.census.gov/geo/www/us_regdiv.pdf*. The territories included here are Puerto Rico, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

The urbanicity categories are U.S. Department of Education, National Center for Education Statistics ''urban-centric local codes.'' ''City'' is any territory, regardless of size, that is inside an urbanized area and inside a principal city. ''Suburb'' is any territory, regardless of size, inside an urbanized area but outside a principal city. ''Town'' is a territory of any size inside an urban cluster but outside an urbanized area. ''Rural'' is a Census-defined rural territory outside both an urbanized area and an urban cluster. These definitions are contained in documentation for the SY 2009–2010 Common Core of Data, *http://nces.ed.gov/ccd/*.

Percent of enrollment certified for free or reduced-price meals is also an NCES Common Core of Data variable.

(and, consequently, 100 percent of meals) will be certified to receive the performance-based reimbursement in FY 2015 and beyond.

Given these assumptions about a phased certification process for some SFAs, the estimated cost of Federal performance-based reimbursements (and the value of additional SFA revenue) is $1.54 billion through FY 2017 (1 percent less than the $1.55 billion estimated with full, immediate implementation).

2. Administrative Costs

Our updated estimate of administrative costs differs only slightly from the estimate published with the interim final rule.[40] The only change is a slight shifting in when certification expenses were incurred (or are estimated to be incurred), based on administrative data on certifications received after publication of the interim rule, as well as accounting for additional wage inflation.

As most SFAs submitted documentary materials in FY 2012 or FY 2013, most of the cost of this administrative burden was realized in those years, and we note that FY 2012 has been excluded from this formal cost analysis. States reported 23.4 percent of SFAs were certified to receive the performance-based reimbursement for October 2012 and therefore incurred certification costs in FY 2012. For purposes of our primary analysis, we assume that the remaining 76.6 percent did so by the end of FY 2013 (as described above, we currently only have data through June 2013).

Based on this updated information on when certifications occurred, we estimate in our primary estimate that State agency and SFA administrative costs associated with the rule totaled $3.7 million across FY 2012 and FY 2013 if all SFAs were determined compliant with the new meal standards based on an initial submission of SFA documentation. $2.9 million of these costs were realized in FY 2013 and are therefore included in the tables above. The ongoing burden created by reporting and recordkeeping requirements are not expected to be appreciably higher than they were before the implementation of the interim rule.

Under our alternate scenario, we assume that an additional 66.6 percent of SFAs submitted documentation by the end of FY 2013 and that the remaining 10 percent of SFAs did not submit applications to their State agencies in FY 2013.[41] For this estimate, we assume that these SFAs will take the steps necessary to reach compliance in FY 2014, and will submit documentation to their State agencies in that fiscal year, so those certification costs for both the States and remaining SFAs are realized in FY 2014.

Administrative costs will be similar, but will be spread over two years under our alternate scenario of less than 100 percent SFA compliance with the new standards by the start of SY 2013–2014. The cost of preparing and processing initial certification claims in FY 2012 and FY 2013 by 90 percent of SFAs will equal $3.4 million, of which $2.5 million was realized in FY 2013. The cost of submitting and processing the remaining claims will equal $0.4 million in FY 2014.

Due to inflation, SFAs and State agencies that submit or process documentation in FY 2014 will face slightly higher labor costs than those that submitted documentation in prior fiscal years, though this cost increase is too small to appear in our tables at the level of detail presented.

3. Uncertainties

The most significant unknown in this analysis is the length of time it will take all SFAs to reach full compliance. Our primary revenue and cost estimate developed in the previous section assumes full compliance by October 2013.[42] Our alternate estimate assumes that 10 percent of SFAs are certified compliant with the rule sometime in FY 2014.

Because the economic effects are essentially proportionate to the level of SFA compliance, the effects of more or less optimistic scenarios can be estimated by scaling the effects of our alternate scenario upward or downward by the assumed rates of initial and future year compliance.

Another important unknown is the student response to the introduction of new meal patterns. Although the introduction of healthier meals may attract new participants to the school meals program, the replacement or reformulation of some favorite foods on current school menus may depress participation, at least initially. As we did in the impact analysis for the school meal patterns rule, we provide alternate estimates given a 2 percent increase and a 2 percent decrease in student participation. The estimates shown here are simply 2 percent higher (or lower) than our estimates in Table 3. That is, we estimate the effect of changes in student participation on the value of the performance-based rate increase alone.

Changes in participation would also affect the current Section 4 and Section 11 reimbursements and student payments for paid and reduced price lunches. Because those effects are not a consequence of the 6 cent rate increase, but rather a consequence to the change in the content of the meals served, we exclude them from Table 5.

Table 5 does not show the effects on administrative costs (reporting and recordkeeping by State agencies and SFAs, and the technical assistance funds transferred by the Federal government to the States). Those are unchanged from Table 3.

[40] **Federal Register**, Vol. 77, No. 82, pp. 25024–25036.

[41] Our alternate estimate of Federal reimbursements in Section V.B. assumes that 90 percent of SFAs will be certified compliant by the start of FY 2014, or retroactively back to the start of FY 2014. That allows for the possibility that fewer than 90 percent of SFAs will submit applications for certification before the end of FY 2013. For the sake of simplicity, we assume in the alternative administrative cost section of this analysis that 90 percent of applications for certification are submitted before the end of FY 2013.

[42] Note that, even though this RIA was most recently revised in October 2013, data were only available through June 2013.

**Table 5: Alternate Revenue and Cost Impacts (in millions)**

| | Fiscal Year | | | | | |
|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | Total (FY 2013-2017) |
| **2 Percent Increase in Student Participation** | | | | | | |
| **Full Implementation** | | | | | | |
| SFA revenue (NSLP reimbursements) | $260.5 | $327.7 | $329.8 | $332.0 | $334.1 | **$1,584.0** |
| **Phased Implementation** | | | | | | |
| SFA revenue (NSLP reimbursements) | $260.5 | $311.3 | $329.8 | $332.0 | $334.1 | **$1,567.6** |
| **2 Percent Decrease in Student Participation** | | | | | | |
| **Full Implementation** | | | | | | |
| SFA revenue (NSLP reimbursements) | $250.2 | $314.8 | $316.9 | $318.9 | $321.0 | **$1,521.9** |
| **Phased Implementation** | | | | | | |
| SFA revenue (NSLP reimbursements) | $250.2 | $299.1 | $316.9 | $318.9 | $321.0 | **$1,506.2** |

4. Benefits

The benefits to children who consume school meals that follow DGA recommendations is detailed in the impact analysis prepared for the final meal patterns rule.[43] As discussed in that document, the 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease.[44] The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered by the funding made available by this final rule.

5. Transfers

The interim rule will result in a transfer from the Federal government to SFAs of as much as $1.55 billion through FY 2017 to implement the new breakfast and lunch meal patterns that took effect on July 1, 2012. The Federal cost is fully offset by an identical benefit to SFAs and State agencies.

The interim rule generates significant additional revenue for SFAs that partially offset the additional food and labor costs to implement the improved meal standards more fully aligned with the *Dietary Guidelines for Americans.* For example, USDA previously estimated that the improved meal standards would cost an additional $1,220.2 million in FY 2015 (the first year in which the new standards are fully implemented).[45] The rule will generate $323.3 million in additional SFA revenue in the same fiscal year, helping school districts cover about 26% of this additional cost. USDA has also estimated that the paid lunch pricing and non-program food revenue provisions of HHFKA sections 205 and 206 will generate $7.5 billion in revenue for SFAs through FY 2015.[46] In the aggregate, therefore, these provisions provide a net gain in SFA revenue that exceeds the estimated cost of serving school meals that follow the *Dietary Guidelines.*

**VII. Alternatives**

The substantive differences between the interim and final rules are:

1. Decreasing the amount of information required in the States' quarterly certification reports and clarifying that the reports need not be submitted once all SFAs are certified for the performance-based reimbursement; and

2. Making permanent the increased flexibility for SFAs regarding weekly maximum grains and meat/meat alternates and the serving of frozen fruit with added sugar.

These changes all decrease the administrative and/or compliance burden on States and SFAs and/or increase the flexibility for SFAs in serving lunches and breakfasts that comply with the school meal patterns, thereby decreasing costs to States and SFAs. The primary alternative considered in the course of developing the final rule was not to make these changes.

We do not provide a separate cost estimate for this ''doing nothing'' alternative because the decrease in burden associated with the shorter quarterly reports for States is small[47] (less than $50,000 per year) and because

[43] **Federal Register**, Vol. 77, No. 17 pp. 4088–4167.

[44] Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010, p. B1–2. (*http://www.cnpp.usda.gov/DGAs2010-DGACReport.htm*).

[45] **Federal Register**, Vol. 77, No. 17 pp. 4088–4167.

[46] USDA estimate contained in the regulatory impact analysis for the interim rule, ''National School Lunch Program: School Food account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.'' **Federal Register** Vol. 76, No. 117, pp. 35301–35318.

[47] Furthermore, we do not estimate any Federal administrative savings as a result of the shorter quarterly reports.

the additional transfers possibly attributable to the increase in flexibility to SFAs are likely within the cost estimate range published with the interim rule [48] and updated above.

## VIII. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), we have prepared an accounting statement showing the annualized estimates of benefits, costs and transfers associated with the provisions of this final rule.

The figures in the accounting statement are the estimated discounted, annualized costs and transfers of the rule. The figures are computed from the nominal 5-year estimates developed above and summarized in Table 3. The accounting statement contains figures computed with 7 percent and 3 percent discount rates for both our upper bound (primary) estimate and our alternate estimate.

Note that we only provide an accounting statement for the final rule, not for the interim rule (as the interim rule was the baseline for our cost analysis for the final rule). As noted in the above analysis, any possible changes in costs or transfers attributed to the final rule are small and are likely within the cost estimate range published with the interim rule and updated above.

Illustration of Computation

The annualized value of this discounted cost stream over FY 2013–2017 is computed with the following formula, where PV is the discounted present value of the cost stream, *i* is the discount rate (e.g., 7 percent), and *n* is the number of years (5): [49]

$$PV \div \left[ \frac{1 - \frac{1}{(1+i)^{(n-1)}}}{i} + 1 \right]$$

| | Estimate | Year dollar | Discount rate % | Period covered |
|---|---|---|---|---|
| **Benefits** | | | | |
| *Qualitative:* Compared with the interim rule, the final rule makes permanent the increased flexibility for SFAs regarding weekly maximum grains and meat/meat alternates and the serving of frozen fruit with added sugar. If the greater flexibility leads to more SFA participation in the reimbursable school meals program, then students' health may improve. | | | | |
| **Costs** | | | | |
| Annualized Monetized ($millions/year) | n.a.<br>n.a. | 2013<br>2013 | 7<br>3 | FY 2013–2017. |
| As discussed in Section V.A., the reduction in administrative costs to State agencies as a result of the reduced quarterly reporting requirement on SFA compliance is already in the range estimated for our baseline. The reduction in burden for State agencies who will no longer have to submit quarterly reports on SFA compliance once all SFAs have been certified is minimal. The final rule may also slightly reduce the costs of complying with the meal patterns for some SFAs, and reduce the costs of maintaining compliance by others. This reduction in SFA cost is not estimated, and likely lies within our range of alternate estimates for the interim rule. | | | | |
| **Transfers** | | | | |
| Annualized Monetized ($millions/year) | n.a.<br>n.a. | 2013<br>2013 | 7<br>3 | FY 2013–2017. |
| The changes in the final rule that are designed to facilitate compliance with the new meal patterns are expected to increase slightly the number of SFAs that are certified by their State agencies to receive the additional 6 cents per reimbursable lunch. This increased transfer from the Federal government to SFAs will be realized after the end of SY 2013–2014 (primarily in FY 2014 and beyond) when the grains, meat/meat alternate, and frozen fruit provisions contained in FNS policy memos would have expired in the absence of the rule. This possible, small increase in Federal transfers to SFAs also likely lies within our range of alternate estimates for the interim rule. | | | | |

Dated: January 9, 2014.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2014–00624 Filed 1–15–14; 8:45 am]

BILLING CODE 3410–30–P

[48] **Federal Register**, Vol. 77, No. 82 pp. 25024–25036.

[49] The Excel formula for this is PMT (rate, # periods, PV, 0, 1)

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 915

**[Doc. No. AMS–FV–13–0054; FV13–915–2 FR]**

## Avocados Grown in South Florida; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2013–14 and subsequent fiscal periods from $0.25 to $0.30 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order, which regulates the handling of avocados grown in South Florida. Assessments upon Florida avocado handlers are used by the

Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* January 17, 2014.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida avocados beginning April 1, 2013, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the Committee for the 2013–14 and subsequent fiscal periods from $0.25 to $0.30 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012–13 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2013, and unanimously recommended 2013–14 expenditures of $472,553 and an assessment rate of $0.30 per 55-pound container of avocados. In comparison, last year's budgeted expenditures were $324,575. The assessment rate of $0.30 is $0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide additional funds for research to address the Laurel Wilt fungus, which can infect and kill avocado trees.

The major expenditures recommended by the Committee for the 2013–14 year include $175,000 for research, $119,483 for salaries, and $51,500 for employee benefits. Budgeted expenses for these items in 2012–13 were $75,000, $101,705, and $48,000, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and available reserves. Florida avocado shipments for the year are estimated at 1,000,000 55-pound bushel containers, which should provide $300,000 in assessment income. Income derived from handler assessments and interest, and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $465,000) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, § 915.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed, and further rulemaking will be undertaken as necessary. The Committee's 2013–14 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

## Final Regulatory Flexibility Analysis

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

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

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000,

and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011–12 season was approximately $20.79 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment information, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This rule increases the assessment rate for the 2013–14 and subsequent fiscal periods from the current rate of $0.25 to $0.30 per 55-pound bushel container of avocados. The Committee unanimously recommended the increased assessment rate, and 2013–14 expenditures of $472,553. The increase was recommended to provide an additional $100,000 for research to address the Laurel Wilt fungus, which can infect and kill avocado trees. As previously stated, income from handler assessments and interest, and funds from reserves, should be adequate to meet this year's expenses.

Alternative expenditure and assessments levels were discussed prior to arriving at this budget. However, the Committee agreed on $472,553 in expenditures, reviewed the quantity of assessable avocados and available reserves, and recommended an assessment rate of $0.30 per 55-pound bushel container.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic OMB Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on September 17, 2013 (78 FR 57099). Copies of the proposed rule were also mailed or sent via facsimile to all Florida avocado handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending October 2, 2013, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving avocadoes from the 2013–14 crop from growers, the fiscal period began on April 1, 2013, and the assessment rate applies to all Florida avocados received during the 2013–14 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

**List of Subjects in 7 CFR Part 915**

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

**§ 915.235 Assessment rate.**

On and after April 1, 2013, an assessment rate of $0.30 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: January 10, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–00753 Filed 1–15–14; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 930

**[Doc. No. AMS–FV–13–0030; FV13–930–2 FIR]**

## Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Revising Handler Reporting and Grower Diversion Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed handler reporting and grower diversion requirements prescribed under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Cherry Industry

Administrative Board (Board) locally administers the order. The interim rule changed the deadline for submitting the handler reserve plan from November 1 to October 1 and extended the deadline for redeeming or transferring grower diversion certificates from November 1 to June 30 of a given crop year. These changes provide the industry with a more complete and timely picture of the available supply of tart cherries earlier in the season and give handlers more time and flexibility in meeting their obligations under volume regulation.

**DATES:** Effective January 17, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

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

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563.

Prior to this change, handlers were required to submit a handler reserve plan and use grower diversion credits by November 1 of the crop year. A crop year is a 12-month period beginning on July 1 and ending on June 30 of the following year. The order was recently amended to exempt cherries diverted in the orchard (grower diversion) from inclusion in a handler's total volume calculation. When a volume regulation is issued, handlers are obligated to keep a percentage of their total volume in reserve or account for the restricted volume with diversion certificates. These certificates can be earned through export sales, new market or new product sales, or through grower diversion. Before the amendment, the volume of cherries represented by a grower diversion certificate was added to the handler's total volume.

As the volume represented by diversion certificates is no longer part of the total volume calculation, handlers no longer need these certificates to complete the reserve plan. Consequently, the Board believes handlers will be able to complete the simplified reserve plan at an earlier date and recommended changing the date of submission from November 1 to October 1 to provide the industry with a more complete and timely picture of the available supply of tart cherries.

Further, with the amendment to the order, grower diversion certificates no longer need to be linked to when the handler reserve plan is due. To bring consistency to the use of all types of diversion certificates, the Board recommended allowing handlers to transfer and redeem grower diversion certificates through the end of the season, June 30. This change provides handlers with additional time and flexibility in meeting their restriction obligations.

In addition to adjusting the deadline for submitting the handler reserve plan and extending the deadline for redeeming grower diversion certificates, this rule also makes a minor wording change to § 930.158 to facilitate the change in date.

In an interim rule published in the **Federal Register** on August 1, 2013, and effective on August 2, 2013, (78 FR 46494, Doc. No. AMS–FV–13–0030; FV13–930–2 IR), § 930.158 was amended by changing the date ''November 1'' to ''June 30.'' Further, § 930.159 was amended by changing ''November'' to ''October'' in the first sentence and by revising the words ''certificates redeemed'' to read ''certificates to be redeemed'' in the fourth sentence.

## Final Regulatory Flexibility Analysis

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

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

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

According to data from the National Agricultural Statistics Service and the Board, the average annual grower price for tart cherries during the 2012–13 season was $0.54 per pound, and total shipments were around 85 million pounds. Therefore, average receipts for tart cherry producers were around $76,200, well below the SBA threshold for small producers. In 2013, The Food Institute estimated an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Based on this information, average annual handler receipts were about $1.8 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of tart cherry producers and handlers may be classified as small entities.

This rule continues in effect an interim rule that changed the deadline for submitting the handler reserve plan from November 1 to October 1 and extended the deadline for redeeming or transferring grower diversion certificates from November 1 to June 30 of a given crop year. These changes provide the industry with a more complete and timely picture of the available supply earlier in the season. In addition, the new deadline gives handlers more time and flexibility to meet their obligations under volume regulation. This rule amends the provisions of §§ 930.158 and 930.159. Authority for the change in the order's rules and regulations is provided in §§ 930.58 and 930.59.

It is not anticipated that this rule will generate any additional costs for growers or handlers. This action is intended to adjust regulations to reflect recent amendments to the order and to allow the order to function more efficiently. These changes are expected to benefit the industry by providing a clear picture of available supply earlier in the season, and by allowing handlers more time to utilize grower diversion

certificates to meet their obligations under volume regulation. These changes should impact all entities positively, regardless of size.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). This rule required changes to Cherry Industry Administrative Board Form 4, ''Handler Reserve Plan and Final Pack Report.'' However, these changes are minor and the currently approved burden for the form remains the same. The revised form has been submitted to OMB for approval as part of the routine three-year renewal of all forms related to this order.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend videoconference meetings at regional locations or call in to participate in Board deliberations. Like all Board meetings, the March 21, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 30, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0030-0001*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 46494, August 1, 2013) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

Accordingly, the interim rule that amended 7 CFR part 930 and was published at 78 FR 46494 on August 1, 2013, is adopted as a final rule, without change.

Dated: January 10, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–00769 Filed 1–15–14; 8:45 am]

BILLING CODE 3410–02–P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 249

**[Release No. 34–71288; File No. S7–45–10]**

**RIN 3235–AK86**

## Registration of Municipal Advisors; Temporary Stay of Final Rule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; stay.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is staying temporarily Rules 15Ba1–1 through 15Ba1–8 and Rule 15Bc4–1 (''Rules'') under the Securities Exchange Act of 1934 and Forms MA, MA–I, MA–W, and MA–NR (''Forms'') until July 1, 2014 and making conforming, non-substantive amendments to Rule 15Ba1–8 regarding recordkeeping requirements to conform the dates referenced in certain provisions of that rule to the July 1, 2014 date (the ''Amendment''). The effective date for the Rules and Forms was January 13, 2014. This stay of the Rules and Forms means that persons are not required to comply with the Rules and Forms until July 1, 2014. The Amendment is the only action the Commission is taking in this release with respect to the Rules and Forms. Therefore, the phased-in compliance period that begins on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules remains unchanged.

**DATES:** Effective January 13, 2014, 17 CFR 240.15Ba1–1 through 15Ba1–8 and 240.15Bc4–1 and 17 CFR 249.1300, 249.1310, 249.1320, and 249.1330 are stayed until July 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Cross, Director; Jessica Kane, Senior Special Counsel to the Director; Rebecca Olsen, Attorney Fellow; Mary Simpkins, Senior Special Counsel; Edward Fierro, Attorney-Adviser; or Cori Shepherd, Attorney-Adviser; Office of Municipal Securities, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010. Contact phone number: (202) 551–5680

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

Section 15B(a)(1) of the Exchange Act,[1] as amended by Section 975(a)(1)(B) of the Dodd-Frank Act,[2] makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. Section 15B(a)(2) of the Exchange Act,[3] as amended by Section 975(a)(2) of the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

On September 20, 2013, the Commission issued Rules and Forms to provide for municipal advisor registration under a permanent registration regime.[4] The effective date for the Rules and Forms was January 13, 2014. The Commission provided a phased-in compliance period, beginning on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules. Municipal advisors currently are subject to the statutory regime under Section 15B of the Exchange Act, which imposes on municipal advisors a fiduciary duty to municipal entities, and the temporary registration regime under which municipal advisors are required to

[1] 15 U.S.C. 78*o*–4(a)(1).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 15 U.S.C. 78*o*–4(a)(2).

[4] *See* Registration of Municipal Advisors, Release No. 34–70462 (September 20, 2013), 78 FR 67467 (November 12, 2013), available at *http://www.sec.gov/rules/final/2013/34-70462.pdf* (the ''Adopting Release'').

register with the Commission on Form MA–T under the interim final temporary Rule 15Ba2–6T.

Market participants have requested additional time before the Rules and Forms apply to them to address a number of issues regarding implementation of and compliance with the Rules, including, among other things, adapting their policies and procedures, developing supervisory practices and internal controls, adapting their account and investment tracking systems, developing recordkeeping procedures, adapting their business models and practices, educating their personnel with respect to this regulatory regime, and developing training programs to establish effective compliance with the Rules.[5]

Pursuant to the Amendment, the Commission is staying temporarily the Rules and Forms until July 1, 2014 and making conforming, non-substantive amendments to Rule 15Ba1–8 regarding recordkeeping requirements to conform the dates referenced in certain provisions of that rule to the July 1, 2014 date. The effective date for the Rules and Forms was January 13, 2014. This stay of the Rules and Forms means that persons are not required to comply with the Rules and Forms until July 1, 2014. The Amendment is the only action the Commission is taking in this release with respect to the Rules and Forms.[6]

To provide certainty about the status of the Rules and Forms pending publication in the **Federal Register** of this release fully staying the Rules and Forms until July 1, 2014, an exemption from the Rules and Forms is hereby ORDERED under Section 36 of the Exchange Act until such publication. For the reasons discussed throughout the release regarding the need to provide market participants additional time to comply with the Rules, the Commission believes that providing this temporary exemption is necessary and appropriate in the public interest and is consistent with the protection of investors.

The Amendment will provide market participants with a limited amount of additional time to analyze, implement and comply with the Rules.[7] The Commission believes that the temporary stay period appropriately balances the goals of protecting municipal entities, enhancing the quality of municipal advice, and protecting investors in the municipal securities market through an effective municipal advisor registration regime while providing appropriate relief to industry participants that need additional time to understand the scope and application of the Rules and to implement effective compliance with the Rules. The Commission also believes that the stay of the Rules and Forms until July 1, 2014 pursuant to the Amendment is appropriate since July 1, 2014 is the first day of the phased-in compliance period for municipal advisors to comply with the requirement to register as municipal advisors using the Forms under the Rules.

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[8] This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [9] The Rules and Forms are effective beginning January 13, 2014, but the Commission has been made aware of the need for additional time for market participants to analyze, implement, and comply with the Rules, and thus is taking immediate action. In addition, the Commission notes that the Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms that were subject to notice and public comment and discussed in the Adopting Release. The Amendment merely preserves the status quo until July 1, 2014, which will provide municipal advisors and other municipal market participants with additional time to analyze, implement, and comply with the Rules. For these reasons, and the reasons discussed throughout this release, the Commission believes that there is good cause to act now to stay the Rules and Forms to July 1, 2014 and to make conforming, non-substantive date changes, and to find that notice and solicitation of comment on the stay is impracticable, unnecessary, or contrary to the public interest.[10]

The APA also generally requires that an agency publish a substantive rule in the **Federal Register** not less than 30 days before its effective date.[11] This requirement, however, does not apply if the agency finds good cause and publishes such cause with the rule.[12] As noted above, the Rules and Forms are effective beginning January 13, 2014, but there is a need for immediate action by the Commission to provide additional time for market participants to analyze, implement, and comply with the Rules. In addition, this Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. For these reasons, and the reasons discussed throughout this release, the Commission finds good cause not to delay the effective date of the stay.

The Rules and Forms contain ''collection of information'' requirements as defined by the Paperwork Reduction Act of 1995, as amended (''PRA''), but the Commission believes that the Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms. In this

[5] *See* letters from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated November 8, 2013; Karen L. Barr, General Counsel, Investment Adviser Association; Laura L. Grossman, Assistant General Counsel, Investment Adviser Association; Timothy W. Cameron, Managing Director, Asset Management Group, Securities Industry and Financial Markets Association; and Matthew J. Nevins, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, dated January 2, 2014; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 9, 2014; and Cristeena Naser, Vice President and Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association, dated January 10, 2014.

[6] The Commission is not reopening these Rules and Forms, which were previously adopted as a result of the new registration requirement in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

[7] *See* Exchange Act Rule 15Ba1–8(a)(3)(ii), (a)(6), (a)(7)(ii), and (b)(2). The Commission also notes that, on January 10, 2014, the staff in the Office of Municipal Securities provided staff guidance, in the form of frequently asked questions (''FAQs''), to address certain questions relating to the advice standard in general, the exemption for responses to requests for proposals and requests for qualifications, the independent registered municipal advisor exemption, the registered investment adviser exclusion, the underwriter exclusion, advice in situations after a municipal securities issuance, remarketing agent services, opinions by citizens in public discourse, the effective date for the Rules, and the compliance period for registering using the final registration forms under the Rules. *See* Registration of Municipal Advisors Frequently Asked Questions (January 10, 2014), available at *http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf.*

[8] *See* 5 U.S.C. 553(b).

[9] *See* 5 U.S.C. 553(b)(3)(B).

[10] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines''). Because the Commission is not publishing the rule amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2) (for purposes of the Regulatory Flexibility Act, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking).

[11] *See* 5 U.S.C. 553(d).

[12] *See* 5 U.S.C. 553(d)(3).

regard, the Commission does not believe that this Amendment would require any new or additional ''collection of information'' as such term is defined in the PRA and will not impose any new burdens or costs upon municipal advisors.

The Commission is sensitive to the costs and benefits of its rules. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[13] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[14] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[15]

As discussed above, the Amendment only stays the Rules and Forms to July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms. The temporary registration regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the Amendment are measured.

In the Adopting Release, the Commission discussed the costs and benefits of the temporary registration regime and the current state of the municipal advisor market.[16] Since the Commission is only staying the Rules and Forms until July 1, 2014 and making conforming, non-substantive date changes, and is not substantively changing any of the Rules or Forms, the Commission believes the discussion of the temporary registration regime in the Adopting Release applies and the Commission does not expect additional significant costs or effects on efficiency, competition, or capital formation to result from the stay. The Commission also continues to believe that the Rules and Forms, as stayed, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission considered the alternatives of not staying the Rules and Forms, or providing a longer or shorter stay period. However, for the reasons discussed above, the Commission believes that providing the temporary stay until July 1, 2014 appropriately balances the goals of protecting municipal entities, enhancing the quality of municipal advice, and protecting investors in the municipal securities market through an effective municipal advisor registration regime while providing appropriate relief to industry participants that need additional time to understand the scope and application of the Rules and to implement effective compliance with the Rules.

## II. Statutory Authority and Text of Rule and Amendments

Pursuant to the Exchange Act, and particularly Sections 15B (15 U.S.C. 78*o*–4,) and Section 36 (15 U.S.C. 78mm(a)), the Commission is amending § 240.15Ba1–8 as set forth below.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements.

### Text of Rule and Amendments

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

### § 240.15Ba1–8 [Amended]

■ 2. Section 240.15Ba1–8 is amended:
■ a. In paragraph (a)(3)(ii), by removing the phrase ''January 13, 2014'' and adding in its place ''July 1, 2014'';
■ b. In paragraph (a)(6), by removing the phrase ''January 13, 2014'' and adding in its place ''July 1, 2014'';
■ c. In paragraph (a)(7)(ii), by removing the phrase ''January 13, 2014'' and adding in its place ''July 1, 2014'';
■ d. In paragraph (b)(2), by removing the phrase ''January 13, 2014'' and adding in its place ''July 1, 2014''.

### §§ 240.15Ba1–1 through 240.15Ba1–8 [Stayed]

■ 3. Sections 240.15Ba1–1 through 240.15Ba1–8 are stayed until July 1, 2014.

### § 240.15Bc4–1 [Stayed]

■ 4. Section 240.15Bc4–1 is stayed until July 1, 2014.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

### §§ 249.1300, 249.1310, 249.1320, and 249.1330 [Stayed]

■ 6. Sections 249.1300, 249.1310, 249.1320, and 249.1330 are stayed until July 1, 2014.

Dated: January 13, 2014.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2014–00740 Filed 1–13–14; 4:15 pm]

BILLING CODE 8011–01–P

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 300

**[Release No. SIPA–172; File No. SIPC–2012–01]**

## Rules of the Securities Investor Protection Corporation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is approving a proposed rule change filed by the Securities Investor Protection Corporation (''SIPC''). The proposed rule change amends SIPC Rule 400 (''Rule 400''), entitled ''Rules Relating to Satisfaction of Customer Claims for Standardized Options,'' which relates to the satisfaction of customer claims for standardized options under the Securities Investor Protection Act of 1970 (''SIPA''). Because SIPC rules have the force and effect as if promulgated by the Commission, the rules are published in Title 17 of the Code of Federal Regulations, where the rule change will be reflected.

**DATES:** *Effective Date:* February 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate

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[13] *See* 15 U.S.C. 78c(f).

[14] *See* 15 U.S.C. 78w(a)(2).

[15] *See* 15 U.S.C. 78w(a)(2).

[16] *See* Adopting Release, *supra* note 4, at Section VIII.C.

Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Sheila Dombal Swartz, Special Counsel, at (202) 551–5545; or Kimberly N. Chehardy, Special Counsel, at (202) 551–5791, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:** The Commission is approving a proposed rule change filed by SIPC, amending Rule 400, 17 CFR 300.400 under SIPA.

## I. Background

On November 7, 2012, SIPC filed a proposed rule change pursuant to section 3(e)(2)(A) of SIPA [1] with the Securities and Exchange Commission.[2] SIPC subsequently submitted an amendment to the proposed rule change on January 31, 2013.[3] Notice of the proposed rule change was published in the **Federal Register** on November 5, 2013.[4] The Commission did not receive comments in response to the notice. The Commission is approving the proposed rule change under section 3(e)(2) of SIPA.

## II. Proposed Rule Change

Rule 400 was enacted to provide clarity in the treatment of customer claims based on ''Standardized Options'' [5] positions in the liquidation of broker-dealers under SIPA. Currently, Rule 400 provides for the closeout of open Standardized Options positions upon the commencement of a SIPA liquidation. Based upon the amounts realized upon closeout, the trustee calculates the value of customers' Standardized Options positions, and credits or debits customers' accounts by the appropriate amounts. The amendments to Rule 400 are designed to: (1) Provide trustees appointed under SIPA with greater flexibility in the treatment of Standardized Options upon the commencement of a SIPA liquidation proceeding; and (2) modify the definition of Standardized Options to include options issued by a Commission-registered securities clearing agency or a foreign securities clearing agency, *i.e.,* a cleared over-the-counter option (''OTC Option'').

In light of experience and knowledge gained from the liquidation of Lehman Brothers Inc. (''Lehman'') and other SIPA proceedings, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, of transferring customers' options positions or of liquidating their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. SIPC stated that the ability to transfer Standardized Options positions to another brokerage in lieu of an automatic closeout gives SIPA trustees more flexibility in handling such customer assets after the commencement of a SIPA liquidation proceeding, and more closely approximates what the customer would expect to be in his account but for the failure of the broker-dealer.

This is particularly true where the trustee, as in the Lehman case, was able promptly to effectuate bulk transfers of customer accounts to other brokerages enabling customers to regain access to their accounts in the form in which the accounts existed pre-liquidation, with comparatively minimal disruption. In such instances, customers generally are better served by having their options positions transferred with their other securities to their accounts at their new broker-dealer. SIPC stated that proposed amendments would provide clear authority for a SIPA trustee to transfer the Standardized Options positions, with SIPC's consent. This greater flexibility in the treatment of open positions would enhance customer protection under exigent circumstances, and potentially avoid exacerbating the turmoil or harm to customers and/or the markets that could be caused by the forced liquidation of open positions.

Under paragraph (h) of Rule 400, *Standardized Options* means options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange. The amendments modify the definition of *Standardized Options* to include any other option that is a *security* under section 16(14) of SIPA and is issued by a registered securities clearing agency or foreign securities clearing agency.[6] For example, the Options Clearing Corporation (''OCC'') proposed, and the Commission approved, a rule change to establish a legal and operational framework for OCC to provide central clearing for OTC Options.[7] If OCC clears OTC Options, SIPC stated these options will be deemed Standardized Options subject to closeout or transfer in a SIPA proceeding.

Because the OTC Options are similar to exchange-traded index options, and generally would be cleared by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') [8] subject to the same basic rules and procedures used for the clearance of index options, SIPC stated there appears to be no practical basis to treat OTC Options differently under SIPA for purposes of Rule 400. Indeed, modifying the definition of *Standardized Options* under paragraph (h) of Rule 400 to include OTC Options would enhance the protections afforded customers in the event of a liquidation of their broker-dealer.

## II. Discussion and Commission Action

Section 3(e)(2)(A) of SIPA provides that the SIPC Board of Directors must file with the Commission a copy of any proposed amendment to a SIPC rule.[9] Section 3(e)(2)(B) of SIPA provides that within thirty-five days after the date of publication of the notice of filing of a proposed rule change, the Commission shall: (1) By order approve the proposed rule change; or (2) institute proceedings to determine whether the proposed rule change should be disapproved.[10] Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.[11]

[1] 15 U.S.C. 78ccc(e)(2)(A).

[2] *See* Letter from Josephine Wang, General Counsel and Secretary, SIPC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Nov. 7, 2012).

[3] *See* Letter from Josephine Wang, General Counsel and Secretary, SIPC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Jan. 31, 2013) (''Pursuant to discussions between SIPC and the Commission's Division of Trading and Markets, SIPC hereby submits a partial amendment to the proposed amendments previously submitted.''). ''The partial amendment makes changes only to subsection (h) of Rule 400, by inserting the phrase ''a 'security' under section 16(14) of the Act and is'' prior to the words ''issued by a securities clearing agency . . . .'' *Id.*

[4] *See* Notice of Filing a Proposed Rule Change Relating to Securities Investor Protection Corporation Rule 400, Release No. SIPA–171 (Oct. 29, 2013), 78 FR 66318 (Nov. 5, 2013).

[5] The term *Standardized Options* is defined in paragraph (h) of Rule 400 as ''options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange. 17 CFR 300.400(h).

[6] Existing Rule 400 applies to options traded on foreign securities exchanges as well as U.S. exchanges.

[7] *See* Securities Exchange Act Release No. 67835 (Sept. 12, 2012), 77 FR 57602 (Sept. 18, 2012), (SR–OCC–2012–14); *see also* Securities Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (approving proposed rule change). OCC also filed, and received accelerated approval of, a proposed rule change to reflect enhancements in its system for theoretical analysis and numerical simulations as applied to longer-tenor options. Securities Exchange Act Release No. 70719 (Oct. 18, 2013), 78 FR 63548 (Oct. 24, 2013), (SR–OCC–2013–16).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78ccc(e)(2)(A).

[10] 15 U.S.C. 78ccc(e)(2)(B).

[11] 15 U.S.C. 78ccc(e)(2)(D).

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the proposed rule change is in the public interest and consistent with the purposes of SIPA. First, as noted above, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, to transfer customers' options positions or to liquidate their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. The ability to transfer Standardized Options positions to another brokerage instead of being required to close them out gives SIPA trustees more flexibility in handling customer assets after the commencement of a SIPA liquidation proceeding. Second, SIPA noted that modifying the definition of *Standardized Options* under paragraph (h) of Rule 400 to include OTC Options would enhance the protections afforded customers in the event of a liquidation of their broker-dealer. This modification also clarifies that—like exchange-traded options—OTC Options would be deemed Standardized Options subject to closeout or transfer in a SIPA liquidation proceeding. Accordingly, the Commission finds that the proposed SIPC rule change is in the public interest and is consistent with the purposes of the SIPA.

*It is therefore ordered by the commission,* pursuant to section 3(e)(2) of SIPA, that the above mentioned proposed rule change is approved. In accordance with section 3(e)(2) of SIPA, the approved rule change shall be given the force and effect as if promulgated by the Commission.

### III. Statutory Authority

Pursuant to SIPA, 15 U.S.C. 78aaa *et. seq.,* and particularly, section 3(e) (15 U.S.C. 78ccc(e)), SIPC is amending section 300.400 of Title 17 of the Code of Federal Regulations in the manner set forth below.

### List of Subjects in 17 CFR Part 300

Brokers, Securities.

### Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

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

**Authority:** 15 U.S.C. 78ccc.

* * * * *

**§ 300.400 [Amended]**

■ 2. Section 300.400 is amended by:

■ a. In paragraph (b), adding the phrase ''except to the extent that the trustee, with SIPC's consent, or SIPC as trustee, as the case may be, has arranged or is able promptly to arrange, a transfer of some or all of such positions to another SIPC member'' after the phrase ''accounts of customers'';

■ b. In paragraph (e), adding the phrase ''except to the extent that such positions have been transferred as provided in paragraph (b) of this section'' after the phrase ''section 7(b)(1) of the Act''; and

■ c. In paragraph (h), adding the phrase '', and any other option that is a security under section 16(14) of the Act, 15 U.S.C. 78lll(14), and is issued by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1, or a foreign securities clearing agency'' after the phrase ''foreign securities exchange''.

Dated: January 9, 2014.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2014–00556 Filed 1–15–14; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 12

**[CBP Dec. 14–01]**

**RIN 1515–AD95**

## Import Restrictions Imposed on Certain Archaeological and Ecclesiastical Ethnological Material From Bulgaria

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological and ecclesiastical ethnological material from the Republic of Bulgaria. These restrictions are being imposed pursuant to an agreement between the United States and Bulgaria that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The final rule amends CBP regulations by adding Bulgaria to the list of countries for which a bilateral agreement has been entered into for imposing cultural property import restrictions. The final rule also contains the designated list that describes the types of archaeological and ecclesiastical ethnological material to which the restrictions apply.

**DATES:** Effective January 15, 2014.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George Frederick McCray, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082. For operational aspects: Virginia McPherson, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6563.

**SUPPLEMENTARY INFORMATION:**

### Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S.

acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (the Act). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of our common heritage.

Since the Act entered into force, import restrictions have been imposed on the archaeological and ethnological materials of a number of State Parties to the 1970 UNESCO Convention. These restrictions have been imposed as a result of requests for protection received from those nations. More information on import restrictions can be found on the Cultural Property Protection Web site (*http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection*).

This rule announces that import restrictions are now being imposed on certain archaeological and ecclesiastical ethnological materials from Bulgaria.

**Determinations**

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On November 20, 2012, the Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State, made the determinations required under the statute with respect to certain archaeological and ecclesiastical ethnological materials originating in Bulgaria that are described in the designated list set forth below in this document. These determinations include the following:

(1) That the cultural patrimony of Bulgaria is in jeopardy from the pillage of (a) archaeological material representing Bulgaria's cultural heritage dating from the Neolithic period (7500 B.C.) through approximately 1750 A. D. and (b) ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A.D.) through approximately 1750 A.D. (19 U.S.C. 2602(a)(1)(A)); (2) that the Bulgarian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meet the statutory definitions of ''archaeological material of the state party'' and ''ethnological material of the state party'' (19 U.S.C. 2601(2)).

**The Agreement**

The United States and Bulgaria entered into a bilateral agreement pursuant to the provisions of 19 U.S.C. 2602(a)(2). The agreement enables the promulgation of import restrictions on categories of archaeological material representing Bulgaria's cultural heritage dating from the Neolithic period (7500 B.C.) through approximately 1750 A. D. and ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A.D.) through approximately 1750 A.D. A list of the categories of archaeological and ecclesiastical ethnological material subject to the import restrictions is set forth later in this document.

**Restrictions and Amendment to the Regulations**

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the CBP regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

**Designated List of Archaeological and Ecclesiastical Ethnological Material of Bulgaria**

The bilateral agreement between the United States and Bulgaria includes, but is not limited to, the categories of objects described in the designated list set forth below. These categories of objects are subject to the import restrictions set forth above, in accordance with the above explained applicable law and the regulation amended in this document (19 CFR 12.104(g)(a)).

The import restrictions include complete examples of objects and fragments thereof.

The archaeological materials represent the following periods and cultures: Neolithic, Chalcolithic, Bronze Age, Iron Age, Thracian, Hellenistic, Roman, Middle Ages, First Bulgarian Empire, Byzantine, Second Bulgarian Empire, and Ottoman. The ecclesiastical ethnological materials represent the following periods and cultures: Middle Ages, First Bulgarian Empire, Byzantine, Second Bulgarian Empire, and Ottoman. Ancient place-names associated with the region of Bulgaria include Odrysian Kingdom, Thrace, Thracia, Moesia Inferior, Moesia Superior, Coastal Dacia, Inner Dacia, Rhodope, Haemimontus, Europa, Bulgaria, and Eyalet of Rumeli.

*I. Archaeological Material*

A. Stone

1. Sculpture

a. *Architectural Elements*—In marble, limestone, gypsum, and other kinds of stone. Types include acroterion, antefix, architrave, base, capital, caryatid, coffer, column, crowning, fountain, frieze, pediment, pilaster, mask, metope, mosaic and inlay, jamb, tile, triglyph, tympanum, basin, wellhead. Approximate date: First millennium B.C. to 1750 A.D.

b. *Monuments*—In marble, limestone, granite, sandstone, and other kinds of stone. Types include but are not limited to votive statues, funerary, documentary, votive stelae, military columns, herms, stone blocks, bases, and base revetments. These may be painted, carved with borders, carry relief sculpture, and/or carry dedicatory, documentary, official, or funerary inscriptions, written in various languages including Thracian, Proto-Bulgarian, Greek, Latin, Hebrew, Turkish, and Bulgarian. Approximate date: First millennium B.C. through 1750 A. D.

c. *Sarcophagi and ossuaries*—In marble, limestone, and other kinds of stone. Some have figural scenes painted on them, others have figural scenes carved in relief, and some are plain or just have decorative moldings. Approximate date: Third millennium through 1750 A. D.

d. *Large Statuary*—Primarily in marble, also in limestone and sandstone. Subject matter includes human and animal figures and groups of figures in the round. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Third millennium B.C. through 1750 A. D.

e. *Small Statuary and Figurines*—In marble and other stone. Subject matter includes human and animal figures and groups of figures in the round. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through 1750 A. D.

f. *Reliefs*—In marble and other stone. Types include carved relief vases and slabs carved with subject matter such as a horseman, vegetative, floral, or decorative motifs, sometimes inscribed. Used for architectural decoration, funerary, votive, or commemorative monuments. Approximate date: Third millennium B.C. through 1750 A. D.

g. *Furniture*—In marble and other stone. Types include tables, thrones, and beds. Approximate date: Third millennium B.C. through 1750 A. D.

2. *Vessels*—In marble, steatite, rock crystal, and other stone. These may belong to conventional shapes such as bowls, cups, jars, jugs, and lamps, or may occur in the shape of a human or animal, or part of human or animal. Approximate date: Neolithic through 1750 A. D.

3. *Tools, Instruments, and Weapons*—In flint, quartz, obsidian, and other hard stones. Types of stone tools include large and small blades, borers, scrapers, sickles, awls, harpoons, cores, loom weights, and arrow heads. Ground stone types include grinders (e.g., mortars, pestles, millstones, whetstones), choppers, axes, hammers, moulds, and mace heads. Approximate date: Neolithic through 1750 A. D.

4. *Seals and beads*—In marble, limestone, and various semiprecious stones including rock crystal, amethyst, jasper, agate, steatite, and carnelian. May be incised or cut as gems or cameos. Approximate date: Neolithic through 1750 A. D.

B. Metal

1. Sculpture

a. *Large Statuary*—Primarily in bronze, including fragments of statues. Subject matter includes human and animal figures, and groups of figures in the round. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Fifth millennium through 1750 A.D.

b. *Small Statuary and Figurines*—Subject matter includes human and animal figures, groups of figures in the round, masks, plaques, and bronze hands of Sabazios. These range from approximately 10 cm to 1 m in height. Approximate date: First millennium B.C. through Roman.

c. *Reliefs*—In gold, bronze, or lead. Types include burial masks, leaves, and appliqué with images of gods, mythical creatures, etc. First millennium B.C. through Roman.

d. *Inscribed or Decorated Sheet Metal*—In bronze or lead. Engraved inscriptions, ''military diplomas,'' and thin metal sheets with engraved or impressed designs often used as attachments to furniture. Approximate date: First millennium B.C. through 1750 A.D.

2. *Vessels*—In bronze, gold, and silver. Bronze may be gilded or silver-plated. These may belong to conventional shapes such as bowls, cups, jars, jugs, strainers, cauldrons, candelabras, and lamps, or may occur in the shape of a human or animal or part of a human or animal. Approximate date: Fifth millennium B.C. through 1750 A.D.

3. *Personal Ornaments*—In copper, bronze, gold, and silver. Bronze may be gilded or silver-plated. Types include torques, rings, beads, pendants, belts, belt buckles, belt ends/appliqués, earrings, ear caps, diadems, spangles, straight and safety pins, necklaces, mirrors, wreaths, cuffs, pectoral crosses, and beads. Approximate date: Fifth millennium B.C. through 1750 A.D.

4. *Tools*—In copper, bronze and iron. Types include knives, hooks, weights, axes, scrapers, (strigils), trowels, keys, dies for making coins, and the tools of physicians and artisans such as carpenters, masons and metal smiths. Approximate date: Fifth millennium B.C. through 1750 A.D.

5. *Weapons and Armor*—In copper, bronze and iron. Types include both launching weapons (harpoons, spears and javelins) and weapons for hand-to-hand combat (swords, daggers, battle axes, rapiers, maces etc.). Armor includes body armor, such as helmets, cuirasses, shin guards, and shields, and horse armor/chariot decorations often decorated with elaborate engraved, embossed, or perforated designs. Approximate date: Fifth millennium B.C. through 1750 A.D.

6. *Seals*—In lead, tin, copper, bronze, silver, and gold. Types include rings, amulets, stamps, and seals with shank. They pertain to individuals, kings, emperors, patriarchs, and other spiritual leaders. Approximate date: Bronze Age through 1750 A.D.

7. *Coins*—In copper, bronze, silver and gold. Many of the listed coins with inscriptions in Greek can be found in B. Head, Historia Numorum: A Manual of Greek Numismatics (London, 1911) and C.M. Kraay, Archaic and Classical Greek Coins (London, 1976). Many of the Roman provincial mints in modern Bulgaria are covered in I. Varbanov, Greek Imperial Coins I: Dacia, Moesia Superior, Moesia Inferior (Bourgas, 2005), id., Greek Imperial Coins II: Thrace (from Abdera to Pautalia) (Bourgas, 2005), id., Greek Imperial Coins III: Thrace (from Perinthus to Trajanopolis), Chersonesos Thraciae, Insula Thraciae, Macedonia (Bourgas 2007). A non-exclusive list of pre-Roman and Roman mints include Mesembria (modern Nesembar), Dionysopolis (Balchik), Marcianopolis (Devnya), Nicopolis ad Istrum (near Veliko Tarnovo), Odessus (Varna), Anchialus (Pomorie), Apollonia Pontica (Sozopol), Cabyle (Kabile), Deultum (Debelt), Nicopolis ad Nestum (Garmen), Pautalia (Kyustendil), Philippopolis (Plovdiv), Serdica (Sofia), and Augusta Traiana (Stara Zagora). Later coins may be found in A. Radushev and G. Zhekov, Catalogue of Bulgarian Medieval Coins IX–XV c. (Sofia 1999) and J. Youroukova and V. Penchev, Bulgarian Medieval Coins and Seals (Sofia 1990).

a. Pre-monetary media of exchange including ''arrow money,'' bells, and bracelets. Approximate date: 13th century B.C. through 6th century B.C.

b. Thracian and Hellenistic coins struck in gold, silver, and bronze by city-states and kingdoms that operated in the territory of the modern Bulgarian state. This designation includes official coinages of Greek-using city-states and kingdoms, Scythian and Celtic coinage, and local imitations of official issues. Also included are Greek coins from nearby regions that are found in Bulgaria. Approximate date: 6th century BC through the 1st century B.C.

c. *Roman provincial coins*—Locally produced coins usually struck in bronze or copper at mints in the territory of the modern state of Bulgaria. May also be silver, silver plate, or gold. Approximate date: 1st century BC through the 4th century A.D.

d. *Coinage of the First and Second Bulgarian Empires and Byzantine Empire*—Struck in gold, silver, and bronze by Bulgarian and Byzantine emperors at mints within the modern state of Bulgaria. Approximate date: 4th century A.D. through A.D. 1396.

e. *Ottoman coins*—Struck at mints within the modern state of Bulgaria. Approximate date: A.D. 1396 through A.D. 1750.

C. Ceramic

1. *Sculpture*

a. *Architectural Elements*—Baked clay (terracotta) elements used to decorate buildings. Elements include tiles, acroteria, antefixes, painted and relief plaques, metopes, cornices, roof tiles, pipes, and revetments. May be painted as icons. Also included are wall and floor plaster decorations. Approximate date: First millennium through 1750 A.D.

b. *Large Statuary*—Subject matter includes human and animal figures and groups of figures in the round. Common

types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Neolithic through 6th century A.D.

c. *Small Statuary*—Subject matter is varied and includes human and animal figures, human body parts, groups of figures in the round, shrines, houses, and chariots. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through 6th century A.D.

2. Vessels

a. *Neolithic and Chalcolithic Pottery*—Handmade, decorated with appliqué and/or incision, sometimes decorated with a lustrous burnish or added paint. These come in a variety of shapes from simple bowls and vases with three or four legs, anthropomorphic and zoomorphic vessels, to handled scoops and large storage jars.

b. *Bronze Age through Thracian Pottery*—Handmade and wheel-made pottery in shapes for tableware, serving, storing, and processing, with lustrous burnished, matte, appliqué, incised, and painted decoration.

c. *Black Figure and Red Figure Pottery*—These are made in a specific set of shapes (e.g. amphorae, kraters, hydriae, oinochoi, kylikes) decorated with black painted figures on a clear clay ground (Black Figure), decorative elements in reserve with background fired black (Red Figure), and multi-colored figures painted on a white ground (White Ground). Approximate date: First millennium B.C.

d. *Terra sigillata*—Is a high quality table ware made of red to reddish brown clay, and covered with a glossy slip. Approximate date: Roman.

e. *Seals*—On the handles and necks of bottles (amphorae). First millennium B.C through Middle Ages.

f. *Middle Ages*—Includes undecorated plain wares, utilitarian wares, tableware, serving and storage jars, and special containers such as pilgrim flasks. These can be matte painted or glazed, including incised as ''sgraffitto,'' stamped, and with elaborate polychrome decorations using floral, geometric, human, and animal motifs.

D. Bone, Ivory, Horn, and Other Organics

1. *Small Statuary and figurines*—Subject matter includes human and animal figures and groups of figures in the round. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through Middle Ages.

2. *Personal Ornaments*—In bone, ivory, and spondylus shell. Types include amulets, combs, pins, spoons, small containers, bracelets, buckles, and beads. Approximate date: Neolithic through Middle Ages.

3. *Seals and Stamps*—Small devices with at least one side engraved with a design for stamping or sealing; they can be discoid, cuboid, conoid, or in the shape and animals or fantastic creatures (e.g., a scarab). Approximate date: Neolithic through Middle Ages.

4. *Tools and Weapons*—In bone and horn. Needles, awls, chisels, axes, hoes, picks, harpoons. Approximate date: Neolithic through Middle Ages.

E. Glass and Faience

1. *Vessels*—Shapes include small jars, bowls, animal shaped, goblet, spherical, candle holders, perfume jars (unguentaria). Approximate date: First millennium B.C. through 1750 A.D.

2. *Beads*—Globular and relief beads. Approximate date: Bronze Age through Middle Ages.

F. Paintings

1. *Domestic and Public Wall Painting*—These are painted on mudplaster, lime plaster (wet—buon fresco—and dry—secco fresco); types include simple applied color, bands and borders, landscapes, scenes of people and/or animals in natural or built settings. Approximate date: First millennium B.C. through 1750 A.D.

2. *Tomb Paintings*—Paintings on plaster or stone, sometimes geometric or floral but usually depicting gods, goddesses, or funerary scenes. Approximate date: First millennium B.C. through 6th century A.D.

G. *Mosaics*—Floor mosaics including landscapes, scenes of humans or gods, and activities such as hunting and fishing. There may also be vegetative, floral, or decorative motifs. Approximate date: First millennium B.C. through 1750 A.D.

*II. Ecclesiastical Ethnological Material*

The categories of Bulgarian ecclesiastical ethnological objects on which import restrictions are imposed were made from the beginning of the 4th century A.D. through approximately 1750 A. D.

A. Stone

1. *Architectural elements*—In marble and other stone, including thrones, upright ''closure'' slabs, circular marking slabs omphalion, altar partitions, and altar tables which may be decorated with crosses, human, or animal figures.

2. *Monuments*—In marble and other stone; types such as ritual crosses, funerary inscriptions.

3. *Vessels*—Containers for holy water.

4. *Reliefs*—In steatite or other stones, carved as icons in which religious figures predominate in the figural decoration.

B. Metal

1. *Reliefs*—Cast as icons in which religious figures predominate in the figural decoration.

2. *Boxes*—Containers of gold and silver, used as reliquaries for sacred human remains.

3. *Vessels*—Containers of lead, which carried aromatic oils and are called ''pilgrim flasks.''

4. *Ceremonial paraphernalia*—In bronze, silver, and gold including censers (incense burners), book covers, processional crosses, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Ecclesiastical treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons, baptism vessels, chalices).

C. *Ceramic*—Vessels which carried aromatic oils and are called ''pilgrim flasks.''

D. *Bone And Ivory Objects*—Ceremonial paraphernalia including boxes, reliquaries (and their contents) plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

E. *Wood*—Wooden objects include architectural elements such as painted wood screens (iconostases), carved doors, crosses, painted wooden beams from churches or monasteries, furniture such as thrones, chests and other objects, including musical instruments. Religious figures predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

F. *Glass*—Vessels of glass include lamps and candle sticks.

G. *Textile*—Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

H. *Parchment*—Documents such as illuminated ritual manuscripts occur in single leaves or bound as a book or

''codex'' and are written or painted on animal skins (cattle, sheep/goat, camel) known as parchment.

I. Painting

1. *Wall paintings*—On various kinds of plaster and which generally portray religious images and scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs, including borders and bands.

2. *Panel Paintings (Icons)*—Smaller versions of the scenes on wall paintings, and may be partially covered with gold or silver, sometimes encrusted with semi-precious or precious stones and are usually painted on a wooden panel, often for inclusion in a wooden screen (iconastasis). May also be painted on ceramic.

J. *Mosaics*—Wall mosaics generally portray religious images and scenes of Biblical events.

Surrounding panels may contain animal, floral, or geometric designs. They are made from stone and glass cut into small bits (tesserae) and laid into a plaster matrix.

**Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

**Amendment to CBP Regulations**

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR Part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the table is amended by adding the Republic of Bulgaria to the list in appropriate alphabetical order as follows:

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) * * *

| State party | Cultural property | Decision No. |
|---|---|---|
| * | * | * |
| Bulgaria | Archaeological material representing Bulgaria's cultural heritage from Neolithic period (7500 B.C.) through approximately 1750 A. D. and ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A. D.) through approximately 1750 A. D. | CBP Dec. 14–01 |
| * | * | * |

* * * * *

**Thomas S. Winkowski,**

*Acting Commissioner, U.S. Customs and Border Protection.*

Approved: January 8, 2014.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 2014–00615 Filed 1–15–14; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 510 and 529

**[Docket No. FDA–2013–N–0002]**

## Withdrawal of Approval of New Animal Drug Applications; Argent Laboratories; Formalin; Tricaine Methanesulfonate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of two new animal drug applications (NADAs) held by Argent Laboratories. Withdrawal of approval of these NADAs was at the sponsor's request because the products are no longer manufactured or marketed.

**DATES:** This final rule is effective January 27, 2014.

**FOR FURTHER INFORMATION CONTACT:** David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6843 *david.alterman@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Argent Laboratories, 8702 152d Ave. NE., Redmond, WA 98052 has requested that FDA withdraw approval of the following two NADAs because the products are no longer manufactured or marketed: NADA 042–427 for FINQUEL (tricaine methanesulfonate) and NADA 140–831 for PARACIDE–F (formalin).

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 042–427 and 140–831, and all supplements and amendments thereto, is withdrawn. As provided in the regulatory text of this document, the

animal drug regulations are amended to reflect these voluntary withdrawals of approval.

Following these withdrawals of approval, Argent Laboratories will no longer be the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for this firm.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 529*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.600 [Amended]**

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Argent Laboratories''; and in the table in paragraph (c)(2), remove the entry for ''051212''.

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 4. In § 529.1030:

■ a. Revise paragraph (b);

■ b. Remove paragraphs (d)(1)(i) and (d)(1)(ii), and redesignate paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(1)(v) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii);

■ c. Remove paragraphs (d)(2)(i) and (d)(2)(ii), and redesignate paragraphs (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) as paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii); and

■ d. Revise the introductory text in newly designated paragraph (d)(2)(ii), and revise paragraph (d)(2)(iii).

The revisions read as follows:

**§ 529.1030 Formalin.**

* * * * *

(b) *Sponsors.* See Nos. 049968, 050378, and 067188 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(2) * * *

(ii) For control of external parasites on finfish:

* * * * *

(iii) For control of fungi of the family Saprolegniaceae on finfish eggs: Eggs of all finfish except Acipenseriformes, 1,000 to 2,000 µL/L (ppm) for 15 minutes; eggs of Acipenseriformes, up to 1,500 µL/L (ppm) for 15 minutes.

* * * * *

■ 5. Revise § 529.2503 to read as follows:

**§ 529.2503 Tricaine methanesulfonate.**

(a) *Specifications.* Ethyl-*m*-amino-benzoate methanesulfonate.

(b) *Sponsor.* See No. 050378 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used as follows:

(1) *Amount*—(i) For fish the drug is added to ambient water at a concentration of from 15 to 330 milligrams per liter depending upon the degree of anesthetization or sedation desired, the species and size of the fish, and the temperature and softness of the water. Preliminary tests of solutions must be made with small numbers of fish to determine the desired rates of sedation or anesthesia and the appropriate exposure times for the specific lots of fish under prevailing conditions.

(ii) For amphibians and other aquatic coldblooded animals, the drug is added to ambient water in concentrations of from 1:1000 to 1:20,000 depending upon species and stage of development.

(2) *Indications for use.* It is used for the temporary immobilization of fish, amphibians, and other aquatic coldblooded animals (poikilotherms) as an aid in handling during manual spawning (fish stripping), weighing, measuring, marking, surgical operations, transport, photography, and research.

(3) *Limitations.* Do not use within 21 days of harvesting fish for food. Use in fish intended for food should be restricted to Ictaluridae, Salmonidae, Esocidae, and Percidae, and water temperature should exceed 10 °C. (50 °F). In other fish and in cold-blooded animals, the drug should be limited to hatchery or laboratory use.

Dated: January 10, 2014.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2014–00721 Filed 1–15–14; 8:45 am]

BILLING CODE 4160–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 510 and 529

**[Docket No. FDA–2013–N–0002]**

## Withdrawal of Approval of New Animal Drug Applications; Argent Laboratories; Formalin; Tricaine Methanesulfonate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADAs) held by Argent Laboratories. Withdrawal of approval of these NADAs was at the sponsor's request because the products are no longer manufactured or marketed.

**DATES:** Withdrawal of approval is effective January 27, 2014.

**FOR FURTHER INFORMATION CONTACT:** David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6843, *david.alterman@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Argent Laboratories, 8702 152d Ave. NE., Redmond, WA 98052 has requested that FDA withdraw approval of the following two NADAs because the products are no longer manufactured or marketed: NADA 042–427 for FINQUEL (tricaine methanesulfonate) and NADA 140–831 for PARACIDE–F (formalin).

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 042–427 and 140–831, and all supplements and amendments thereto, is hereby withdrawn.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: January 9, 2014.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2014–00722 Filed 1–15–14; 8:45 am]

**BILLING CODE 4160–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2013–0483; FRL–9905–9905–21–Region 7]**

## Approval and Promulgation of Implementation Plans and Title V Operating Permit Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for the state of Iowa. These revisions amend the Iowa air quality rules to eliminate state-only emissions testing procedures and adopt Federal methods; to reduce notification time for portable plant relocations, and allow electronic submittals of notifications; to update air quality definitions to be consistent with federal definitions, and to place into rule the specific procedures for conducting emissions testing.

EPA is also approving revisions to the Iowa Title V Operating Permits Program to revise the definition of ''EPA Reference Method,'' and to adopt by reference the revised Title V Periodic Monitoring Guidance.

**DATES:** This direct final rule will be effective March 17, 2014, without further notice, unless EPA receives adverse comment by February 18, 2014, If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0483, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: Algoe-eakin.amy@epa.gov.*

3. *Mail or Hand Delivery:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2013–0483. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7942, or by email at *Algoe-eakin.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

### I. What is being addressed in this document?

The Iowa Department of Natural Resources (IDNR) is requesting EPA action on including revisions to the Iowa State Implementation Plan (SIP) and the Iowa Title V Program. IDNR has requested the SIP be amended to include revisions made to Chapter 20 ''Scope of Title- Definitions- Forms-Rules of Practice,'' Chapter 22, ''Controlling Pollution,'' and Chapter 25 ''Measurement of Emissions'' in the Iowa Administrative Code. The purpose of the rules is to provide consistency between the state and Federal regulations.

### II. Have the requirements for approval of a SIP and Title V revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V and the Title V Operating program.

### III. What action is EPA taking?

EPA is taking direct final action to approve SIP revisions to amend the Iowa air quality rules, to eliminate state-only emissions testing procedures and adopt Federal methods; to reduce notification time for portable plant relocations, and allow electronic submittals of notifications; to update air quality definitions to be consistent with federal definitions, and to place into rule the specific procedures for conducting emissions testing.

EPA is also taking direct final action to approve the Iowa Title V Operating Permits Program to revise the definition of ''EPA Reference Method,'' and to adopt by reference the revised Title V Periodic Monitoring Guidance. EPA received the request from the State to adopt revisions to the local air agency rules into the SIP on November 26, 2012. The revisions were adopted by the Iowa Environmental Protection Commission on August 21, 2012, and became effective on October 24, 2012.

EPA is taking direct final action to approve the following: (1) Amending the definitions to rule 567–20.2(455B) include revisions to the definitions of ''EPA reference method'', particulate

matter'', ''standard condition'', and ''total suspended particulate'' to match Federal regulations; (2) amending the definitions to rule 567–20.2(455B) to include the adoption of the definition of $PM_{2.5}$. This definition is consistent with Federal regulations (see 40 CFR Part 51, Subparts A and Z and Appendix M, and 40 CFR Part 58, Subpart A; (3) amending definitions to rule 567–22.3(3) ''f'' which contain the provisions for portable plant relocations; (4) amending rule 567–22.100(455B) to revise the definition of ''EPA reference method'' for the Title V Operating Permit Program. The changes to this definition are identical to the revisions for the definition of ''EPA reference method'' in the SIP; (5) amending subrule 22.108(3) to adopt by reference a revised definition of the Title V ''Periodic Monitoring Guidance;'' and (6) amending subrule 25.1(9) to revise the methods and procedures to evaluate compliance with emission limitations or permit conditions. It also rescinds the Compliance Sampling Manual which is no longer necessary due to changes in Federal test methods.

## III. What action is EPA taking?

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial amendment and anticipate no adverse comment because the revisions are largely administrative and consistent with Federal regulations. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

*Statutory and Executive Order Reviews*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action 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. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 17, 2014.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 23, 2013.

**Karl Brooks,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart Q—Iowa

■ 2. Section 52.820(c) is amended by revising entries for Chapter 20, 567–20.2; Chapter 22, 567–22.3; and Chapter 25, 567–25.1 to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Iowa Department of Natural Resources Environmental Protection Commission [567]** | | | | |
| * | * | * | * | * |
| **Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice** | | | | |
| * | * | * | * | * |
| 567–20.2 | Definitions | 10/24/12 | 01/16/14 [*insert Federal Register page number where the document begins*]. | The definitions for aerobic lagoon, odor, odorous substance, odorous substance and greenhouse gas, are not SIP approved. |
| * | * | * | * | * |
| **Chapter 22—Controlling Pollution** | | | | |
| * | * | * | * | * |
| 567–22.3 | Issuing Permits | 10/24/12 | 01/16/14 [*insert Federal Register page number where the document begins*]. | |
| * | * | * | * | * |
| **Chapter 25—Measurement of Emissions** | | | | |
| 567–25.1 | Testing and Sampling of New and Existing Equipment. | 10/24/12 | 01/16/14 [*insert Federal Register page number where the document begins*]. | |
| * | * | * | * | * |

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## PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for Part 70 continues to read as follows:

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

■ 4. Appendix A to Part 70 is amended by adding paragraph (o) under ''Iowa'' to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(o) The Iowa Department of Natural Resources submitted for program approval revisions to 567–22.100(455B) to adopt by reference the definition of ''EPA reference method''. Also adopted by reference is the revised version of the Title V ''Periodic Monitoring Guidance'' at 567–22.108. These revisions to the Iowa program are approved effective *March 17, 2014.*

* * * * *

[FR Doc. 2014–00656 Filed 1–15–14; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 85a

**[Docket No. CDC–2014–0001; NIOSH–271]**

**RIN 0920–AA51**

## Occupational Safety and Health Investigations of Places of Employment; Technical Amendments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Health and Human Services (HHS) intends to amend its regulations pertaining to occupational safety and health investigations of places of employment conducted by the National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), to update outdated terminology and strike references to obsolete government offices or divisions. These changes will not affect current practices.

**DATES:** This rule is effective April 16, 2014 without further action, unless significant adverse comment is received by March 17, 2014. If significant adverse comment is received, HHS will publish a withdrawal of the rule in the **Federal Register** within 30 days after the close of the comment period. If no significant adverse comment is received, HHS will publish a notice in the **Federal Register** confirming the effective date of the Direct Final Rule.

**ADDRESSES:** *Written comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2014–0001; NIOSH–271) or Regulation Identifier Number (0920–AA51) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For detailed instructions on submitting public comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Teresa Schnorr Ph.D., Director NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS); 4676 Columbia Parkway, Cincinnati, OH 45226; 513–841–4428 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This notice is organized as follows:

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Major Provisions
C. Costs and Benefits
II. Public Participation
III. Statutory Authority
IV. Summary of Final Rule
V. Regulatory Assessment Requirements

## I. Executive Summary

### *A. Purpose of Regulatory Action*

The purpose of this direct final rule (DFR) is to make minor technical changes to HHS regulations in 42 CFR part 85a, pertaining to occupational safety and health investigations of places of employment. Amendments to the existing rule include striking references to obsolete government offices or agencies, updating the proper NIOSH office from which to request specific reports of investigations, and correcting outdated terms such as ''motion pictures.'' Obsolete terms and outdated language in Part 85a were identified during the agency's retrospective analysis of existing regulations, in accordance with Executive Order 13563.

### *B. Summary of Major Provisions*

Amendments are made to 42 CFR 85a.2 (alphabetize definitions and strike definitions of ''NIOSH Regional Office,'' and ''BOM (Bureau of Mines)'' and remove reference to ''Public Health Service'' within the definition of ''NIOSH''), 85a.4 (clarify that the union at the place of employment must be notified of the investigation, and strike reference to BOM), 85a.5 (replace ''motion pictures or videotapes'' with ''video recordings'' and ''Humans Subjects Review Board'' with ''Institutional Review Board''), and 85a.8 (replace ''NIOSH Regional Consultant for Occupational Safety and Health'' with ''NIOSH Education and Information Division.''

### *C. Costs and Benefits*

Because there are no substantive changes to 42 CFR part 85a, there are no changes made to current practices. Therefore, there are no costs or benefits associated with this rulemaking.

## II. Public Participation

This DFR is being published because HHS finds that the updates to Part 85a add clarity to the regulation and are non-controversial; HHS does not expect to receive any significant adverse comments on this rulemaking. However, HHS is publishing a companion notice of proposed rulemaking in this issue of the **Federal Register**, in which the same amendments to Part 85a are proposed. If HHS does not receive any significant adverse comments on this DFR within the specified comment period, we will publish a notice in the **Federal Register** confirming the effective date of the final rule within 30 days after the close of the public comment period and withdraw the notice of proposed rulemaking. Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. If significant adverse comments are received, HHS will publish a notice in the **Federal Register** to withdraw this DFR. A final rule will subsequently be published, which will include the Agency's response to comments.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed. You may submit comments on any topic related to this DFR.

## III. Statutory Authority

Subsection 20(b) of the Occupational Safety and Health (OSH) Act of 1970 authorizes the Secretary of Health and Human Services to make inspections and question employers and employees as provided in section 8 of the OSH Act in order to carry out the Secretary's functions and responsibilities under section 20 [29 U.S.C. 669; 29 U.S.C. 657]. Section 8(g)(2) instructs the Secretary to prescribe such regulations as are deemed necessary to carry out the responsibilities of the agency to conduct inspections of an employer's establishment. Sections 103 and 501 of the Federal Mine Safety and Health (FMSH) Act of 1977 authorize the Secretary to make inspections and investigations at coal mines in order to conduct research as may be appropriate to improve working conditions [30 U.S.C. 813(a)] and 951, respectively].

## IV. Summary of Final Rule

The provisions in Part 85a govern procedures NIOSH follows in conducting safety and health investigations at places of employment. The amendments described below are all non-substantive and will have no practical effect on NIOSH procedures or practices, but are being made in accordance with Executive Order 13563, section 6, which requires that Federal agencies conduct retrospective analyses of existing rules. In conducting the analysis, NIOSH discovered that certain terms and references in part 85a were outdated.

### *Section 85a.1 Applicability*

Section 85a.1 states that the provisions in Part 85a pertain to investigations of places of employment conducted by NIOSH pursuant to the statutory authorities noted above. The section also affirms that the provisions in this part do not apply to activities

covered by HHS regulations in 42 CFR part 85. HHS is making no changes to this section.

*Section 85a.2 Definitions*

Section 85a.2 offers definitions for terms used in this part. HHS is making a number of changes to this section. First, the paragraph designations are removed and the terms are listed alphabetically. Next, the definitions of BOM (Bureau of Mines) and NIOSH Regional Office are stricken from § 85a.2, because BOM is obsolete and because the addresses of the regional offices referenced here are no longer relevant to this rule. The phrase ''Public Health Service'' is stricken from the definition of ''NIOSH,'' and the definition of ''FMSH Act,'' is teased apart from the existing definition of ''OSH Act'' and is made a stand-alone definition. None of the changes to this section are substantive.

*Section 85a.3 Authority for Investigations of Places of Employment*

Section 85a.3 establishes procedures by which NIOSH authorized representatives may enter a place of employment for the purpose of conducting investigations under the OSH Act and the FMSH Act. This section also establishes that investigations will be conducted in a reasonable manner. HHS is making a minor change to this section to correct punctuation.

*Section 85a.4 Procedures for Initiating Investigations of Places of Employment*

Section 85a.4 states that the NIOSH authorized representative will contact an official representative of the place of employment prior to a site visit. The NIOSH official will also notify a representative of the appropriate State agency, the local union at the place of employment, the appropriate OSHA Assistant Regional Director, and the appropriate MSHA District Office. HHS is making minor changes to § 85a.4(a)(2) to strike unnecessary language specifying which union official must be notified, thereby clarifying that the union must be notified; a change is also made to § 85a.4(a)(4) to remove reference to the obsolete Bureau of Mines. Section 85a.4(b) is edited to correspond with the change in paragraph (a)(2). One final change is made to § 85a.4(c) to add the term ''or organizations'' to specify that the investigating NIOSH official will notify the individuals or organizations referenced above. HHS is making no further changes to this section.

*Section 85a.5 Conduct of Investigations of Places of Employment*

Section 85a.5 establishes the procedures NIOSH representatives will follow to conduct a workplace investigation. HHS is amending this section to replace the outdated terms ''motion pictures or videotapes'' with ''video recordings'' and ''Human Subjects Review Board'' with ''Institutional Review Board,'' and correcting ''contact agreement,'' which should properly be ''contract agreement'' in paragraph (b)(2). HHS is making no further changes to this section.

*Section 85a.6 Provision of Suitable Space for Employee Interviews and Examinations*

Section 85a.6 requires that the employer, owner, operator, or agent in charge at the investigated place of employment must provide a suitable space for the NIOSH representative to conduct private interviews. HHS is making no changes to this section.

*Section 85a.7 Imminent Dangers*

Section 85a.7 authorizes the NIOSH representative to advise the employer, owner, operator, or agent in charge, any employees who appear to be in danger, and any of the individuals or agencies identified in § 85a.4 that an imminent danger exists. HHS is making no changes to this section.

*Section 85a.8 Reporting of Results of Investigations of Places of Employment*

Section 85a.8 states that NIOSH will make specific reports of investigations available to the employer, owner, operator, or agent in charge, as well as to those individuals or agencies identified in § 85a.4. HHS is amending § 85a.8(a)(2) to strike reference to ''NIOSH Regional Consultant for Occupational Safety and Health'' and replace it with the name of the office that will make specific reports available, the ''NIOSH Education and Information Division.'' HHS is making no further changes to this section.

## V. Regulatory Assessment Requirements

*A. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This direct final rule has been determined not to be a ''significant regulatory action'' under section 3(f) of E.O. 12866. The amendments in this notice alphabetize the definitions section, strike reference to the former Bureau of Mines and NIOSH Regional Office, update where specific reports of investigations may be obtained, and update language used to describe ''motion pictures.'' Because this DFR is entirely administrative and does not affect the economic impact, cost, or policies of the activities authorized by part 85a, HHS has not prepared an economic analysis and the Office of Management and Budget (OMB) has not reviewed this rulemaking.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. Because no substantive changes are being made to 42 CFR part 85a as a result of this action, HHS certifies that this rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. Data collection and recordkeeping requirements for the health investigations of places of employment program receive OMB approval on an as-needed basis. The amendments in this rulemaking do not impact the collection of data.

*D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et*

*seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this direct final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or Tribal governments in the aggregate, or by the private sector. For 2013, the inflation adjusted threshold is $150 million.

*F. Executive Order 12988 (Civil Justice)*

This direct final rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

*G. Executive Order 13132 (Federalism)*

HHS has reviewed this direct final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this direct final rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

*I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this direct final rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

*J. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the direct final rule consistent with the Federal Plain Writing Act guidelines.

**List of Subjects in 42 CFR Part 85a**

Archives and records, Employee management relations, Hazardous substances, Health hazards, Health records, Industry, Investigations, Labor, Mine safety and health, Occupational injury, Occupational safety and health, Reporting and recordkeeping requirements, Research, Respiratory diseases, Right of entry, Toxic substances, Unions.

**Final Rule**

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 85a as follows:

## PART 85a—OCCUPATIONAL SAFETY AND HEALTH INVESTIGATIONS OF PLACES OF EMPLOYMENT

■ 1. The authority citation for part 85a continues to read as follows:

**Authority:** Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and sec. 508, 83 Stat. 803; 30 U.S.C. 957.

■ 2. Revise § 85a.2 to read as follows:

### § 85a.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 or the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the Acts. As used in this part:

*Assistant Regional Director* means any one of the ten Occupational Safety and Health Administration Assistant Regional Directors for Occupational Safety and Health.

*Employee* has the same meaning as stated in the OSH Act and for the purposes of this part includes *miner* as defined in the FMSH Act.

*Employer* has the same meaning as stated in the OSH Act and for the purposes of this part includes *operator* as defined in the FMSH Act.

*FMSH Act* means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

*Informed consent* means the knowing consent of an individual or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary to such consent include:

(1) A fair explanation of the procedures to be followed, and their purposes, including identification of any procedures which are experimental;

(2) A description of any attendant discomforts and risks reasonably to be expected;

(3) A description of any benefits reasonably to be expected;

(4) A disclosure of any appropriate alternative procedures that might be advantageous for the subject;

(5) An offer to answer any inquiries concerning the procedures; and

(6) An instruction that the person is free to withdraw his consent and to discontinue participation in the investigation any time without prejudice to the subject.

*Investigation* means research projects, experiments, demonstrations, studies, and similar activities of NIOSH which are conducted under section 20 of the OSH Act and section 501 of the FMSH Act.

*Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure.

*MSHA District Office* means any one of the Mine Safety and Health Administration's District Offices.

*NIOSH* means the National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention, Department of Health and Human Services.

*NIOSH authorized representative* means a person authorized by NIOSH to conduct investigations of places of employment, including any person that is fulfilling a contract agreement with NIOSH or is serving as an expert or consultant to NIOSH pursuant to the Act.

*OSH Act* means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

*Place of employment* means any coal or other mine, factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by any employee of an employer.

■ 3. Amend § 85a.4 by revising paragraphs (a)(2) and (4), (b), and (c) to read as follows:

### § 85a.4 Procedures for initiating investigations of places of employment.

(a) * * *

(2) The local union at the place of employment, if any;

* * * * *

(4) The appropriate MSHA District Office when investigations are conducted under the FMSH Act.

(b) Advance notice of site visits will not be given to the place of employment

or local union at the place of employment when, in the judgment of the NIOSH authorized representatives, giving such notice would adversely affect the validity and effectiveness of an investigation. Those individuals and organizations specified in § 85a.4(a)(1), (a)(3), and (a)(4) will be notified prior to the initiation of such a site visit. After the site visit has been initiated, and, as soon as possible thereafter, the NIOSH authorized representatives will contact the organizations specified in § 85a.4(a)(2) concerning the nature and details of the site visit.

(c) In those instances where site visits are not necessary to the conduct of an investigation, the NIOSH authorized representatives will contact an official representative of the place of employment either verbally or through a written communication and provide the details of why an investigation of the place of employment is being conducted. If appropriate, the NIOSH authorized representatives will contact those individuals or organizations stipulated in paragraphs (a)(1) through (4) of this section about the nature and details of the investigation.

■ 4. Amend § 85a.5 by revising paragraphs (b)(2) and (d) to read as follows:

**§ 85a.5 Conduct of investigations of places of employment.**

* * * * *

(b) * * *

(2) In those instances where the NIOSH authorized representative is a person fulfilling a contract agreement with NIOSH or is serving as an expert or consultant to NIOSH pursuant to the Act, the employer, owner, operator or agent in charge at the place of employment may, after advising the NIOSH contractor or consultant in writing, elect to withhold information deemed to be a trade secret from such a NIOSH authorized representative or prohibit entry into the area of the place of employment where such entry will reveal trade secrets. In those instances, where the subject information is needed or access to the area of the place of employment is necessary, in the judgment of NIOSH, to fulfill the goals of the investigation, NIOSH regular employees will then obtain the information or enter the subject area of the place of employment.

* * * * *

(d)(1) NIOSH authorized representatives are authorized: To collect environmental samples and samples of substances; to measure environmental conditions and employee exposures (including measurement of employee exposure by the attachment of personal sampling devices to employees with their consent); to take or obtain photographs, video recordings related to the purpose of the investigation; to employ other reasonable investigative techniques, including medical examinations, anthropometric measurements and standardized and experimental functional tests of employees with the informed consent of such employees; to review, abstract, and duplicate such personnel records as are pertinent to mortality, morbidity, injury, safety, and other similar studies; and to question and interview privately any employer, owner, operator, agency, or employee from the place of employment. The employer, owner, operator, or agency shall have the opportunity to review photographs, and video recordings taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

(2) Prior to the conduct of medical examinations, anthropometric measurements or functional tests of any employees, the NIOSH authorized representatives will obtain approval of the procedures to be utilized from the NIOSH Institutional Review Board and no employee examination, measurement or test will be undertaken without the informed consent of such employee.

* * * * *

■ 5. Revise § 85a.7 to read as follows:

**§ 85a.7 Imminent dangers.**

Whenever, during the course of, or as a result of, an investigation under this part, the NIOSH authorized representatives believe there is a reasonable basis for an allegation of an imminent danger, NIOSH will immediately advise the employer, owner, operator or agent in charge at the place of employment and those employees who appear to be in immediate danger of such allegation and will inform the agencies identified in § 85a.4(a) through (4).

■ 6. Amend § 85a.8 by revising paragraph (a)(2) to read as follows:

**§ 85a.8 Reporting of results of investigations of places of employment.**

(a) * * *

(2) All specific reports of investigations of each place of employment under this part will be available to the public from the NIOSH Education and Information Division, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

* * * * *

Dated: December 18, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–00547 Filed 1–15–14; 8:45 am]

BILLING CODE 4163–18–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 95

**[ET Docket No.08–59; FCC 12–54]**

## Medical Body Area Networks; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) corrects a document published December 27, 2013. The **DATES** and **SUPPLEMENTARY INFORMATION** sections contain an incorrect **Federal Register** citation.

**DATES:** Effective January 16, 2014, and applicable beginning December 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** Nancy Brooks, Policy and Rules Division, Office of Engineering and Technology, (202) 418–2454, email *Nancy.Brooks@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The final rules that are the subject of this correction relate to ''Medical Body Area Networks'' under 47 CFR 95.1215(c), 95.1217(a)(3), 95.1223 and 95.1225 of the rules.

### Correction

In FR Doc. 2013–30649, published on December 27, 2013, on page 78769, in the second column, correct the **Federal Register** citation in the **DATES** and **SUPPLEMENTARY INFORMATION** sections to read as ''77 FR 55715, September 11, 2012''.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–00670 Filed 1–15–14; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 120405263–3999–02]**

**RIN 0648–BB76**

## Fisheries of the Exclusive Economic Zone Off Alaska; Tanner Crab Area Closure in the Gulf of Alaska and Gear Modification Requirements for the Gulf of Alaska and Bering Sea Groundfish Fisheries

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA groundfish FMP) and revise regulations governing the configuration of modified nonpelagic trawl gear. First, this rule establishes a protection area in Marmot Bay, northeast of Kodiak Island, and closes that area to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear. The closure will reduce bycatch of Tanner crab (*Chionoecetes bairdi*) in Gulf of Alaska (GOA) groundfish fisheries. Second, this rule requires that nonpelagic trawl gear used in the directed flatfish fisheries in the Central Regulatory Area of the GOA be modified to raise portions of the gear off the sea floor. The modifications to nonpelagic trawl gear used in these fisheries will reduce the unobserved injury and mortality of Tanner crab, and will reduce the potential adverse impacts of nonpelagic trawl gear on bottom habitat. Finally, this rule makes a minor technical revision to the modified nonpelagic trawl gear construction regulations to facilitate gear construction for those vessels required to use modified nonpelagic trawl gear in the GOA and Bering Sea groundfish fisheries. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the GOA groundfish FMP, and other applicable law.

**DATES:** Effective February 18, 2014.

**ADDRESSES:** Electronic copies of Amendment 89 to the GOA groundfish FMP, the proposed rule, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the Area Closures for Tanner Crab Protection in Gulf of Alaska Groundfish Fisheries (Area Closures EA/RIR/IRFA), and the EA/RIR/IRFA for Trawl Sweep Modification in the Flatfish Fishery in the Central Gulf of Alaska (Trawl Sweep EA/RIR/IRFA) are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the GOA groundfish FMP and under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The North Pacific Fishery Management Council (Council) prepared the fishery management plans under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the fishery management plans appear at 50 CFR parts 600 and 679.

The Notice of Availability of Amendment 89 was published in the **Federal Register** on June 3, 2013, with a 60-day comment period that ended August 2, 2013 (78 FR 33040). The Secretary of Commerce approved Amendment 89 on August 26, 2013. NMFS published a proposed rule to implement Amendment 89 and the revision to the modified nonpelagic trawl gear construction regulations on June 17, 2013 (78 FR 36150). The 30-day comment period on the proposed rule ended July 17, 2013. NMFS received a total of 8 comment letters on Amendment 89 and the proposed rule during the comment periods. The letters contained 11 unique comments. A summary of these comments and NMFS' responses are provided in the ''Comments and Responses'' section of this preamble.

This final rule implements the following actions for the management of the trawl fisheries in the Central GOA Regulatory Area and for modified nonpelagic trawl gear construction standards for the GOA and Bering Sea (BS) flatfish fisheries. The proposed rule preamble provides additional information on the three regulatory actions implemented by this final rule, including detailed information on the development of the actions, the impacts and effects of the actions, and the Council's and NMFS' rationale for the actions (78 FR 36150, June 17, 2013). The proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**).

### Action 1: Marmot Bay Tanner Crab Protection Area

This rule establishes a protection area called the Marmot Bay Tanner Crab Protection Area (Marmot Bay Area). The Marmot Bay Area is northeast of Kodiak Island and extends westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees N latitude and 58 degrees 15 minutes N latitude. With one exception, this rule closes the Marmot Bay Area year-round to directed fishing for groundfish by vessels using trawl gear. Directed fishing for pollock by vessels using pelagic trawl gear is exempt from this closure. The term ''directed fishing'' is defined in regulation at § 679.2.

The Marmot Bay Area shares borders with the Marmot Flats and Outer Marmot Bay Areas, shown in Figure 5 to part 679. The Marmot Flats Area is closed year-round to directed fishing with nonpelagic trawl gear (see § 679.22(b)(1)(i) and Figure 5 to part 679). The Outer Marmot Bay Area is open to directed fishing with nonpelagic trawl gear unless otherwise closed. The Marmot Bay Area overlaps with a portion of the Outer Marmot Bay Area. In this area of overlap, the more restrictive measures implemented for the Marmot Bay Area apply. Overall, the effect of the Marmot Bay Area closure is to extend, to the north and east, areas of State and Federal waters that are closed year-round to nonpelagic trawl gear. Additionally, the Marmot Bay Area closure prohibits the use of all trawl gear, other than pelagic trawl gear used to conduct directed fishing for pollock.

### Action 2: Modification of Nonpelagic Trawl Gear Used in the Central GOA Directed Flatfish Fisheries

This rule requires vessels using nonpelagic trawl gear when directed fishing for flatfish in the Central GOA to comply with the gear performance standard and construction requirements specified in § 679.24(f). Section 679.24(f) requires the use of elevating devices to raise the elevated section of the sweeps at least 2.5 inches and requires these elevating devices be installed on each end of the elevated section and be spaced along the entire length of the elevated section of the sweeps no less than 30 feet (9.1 m) apart. These are the same performance standard and gear construction requirements applied to vessels in the Bering Sea flatfish fisheries.

To allow for construction flexibility and wear and tear that might occur during a tow, § 679.24(f) provides for

two different sweep configurations that specify the maximum spacing of elevating devices. The first configuration uses elevating devices that have a clearance height of 3.5 inches (8.9 cm) or less with spacing between the elevating devices of no more than 65 feet (19.8 m). The second configuration uses elevating devices that have a clearance height greater than 3.5 inches (8.9 cm) with spacing between the elevating devices of no more than 95 feet (29 m). Either configuration combined with the minimum spacing for elevating devices of no less than 30 feet (9.1 m) meets the combined gear construction requirements and performance standard for modified nonpelagic trawl gear.

**Action 3: Technical Revision to the Modified Nonpelagic Trawl Gear Construction Requirements in the BSAI**

This rule implements a revision to one component of the regulations at § 679.24(f) concerning construction requirements for modified nonpelagic trawl gear to increase the length limit for the lines that connect the doors and the net to the elevated portions of the sweeps from 180 feet (54.8 m) to 185 feet (56.4 m). This limit is shown on Figure 26 to part 679. Specifically, the revision slightly increases the maximum length to 185 feet (56.4 m) for the lines between the door bridles and the elevated section of the trawl sweeps, and between the net, or headline extension, and the elevated section of the trawl sweeps. This revision applies to the construction requirements for modified nonpelagic trawl gear currently required in the Bering Sea flatfish fisheries and in this rule for the Central GOA flatfish fisheries.

*Summary of Regulatory Revisions Required by the Actions*

The actions described above require the following changes to regulations. This final rule revises two definitions and adds one definition in regulations at § 679.2. The definition of ''federally permitted vessel'' is revised to include the application of this definition to those vessels required to use modified nonpelagic trawl gear in the Central GOA flatfish fisheries. This revision identifies vessels required to comply with the modified nonpelagic trawl gear requirements and is consistent with existing modified nonpelagic trawl gear requirements.

The definition of ''directed fishing'' is revised to add a definition of the directed flatfish fisheries in the GOA. This revision lists the flatfish target species that are used in determining when modified nonpelagic trawl gear is required under § 679.24(f) based on directed fishing for flatfish. This revision is necessary to identify the target species that determines when a vessel is directed fishing for flatfish so the requirement to use modified nonpelagic trawl gear can be applied.

A definition of the Marmot Bay Tanner Crab Protection Area is added to § 679.2. This definition is necessary to identify the location of the area and to define this area consistent with other fishery management areas with similar restrictions.

Section 679.7(b) is revised to prohibit a federally permitted vessel from directed fishing for flatfish in the Central GOA without using modified nonpelagic trawl gear. This revision is necessary to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Central GOA Regulatory Area and to ensure that the modified nonpelagic trawl gear meets the performance standard and construction requirements specified at § 679.24(f).

Section 679.22 is revised to add the Marmot Bay Tanner Crab Protection Area as an area closed to trawling in the GOA. The closure includes an exemption for vessels directed fishing for pollock with pelagic trawl gear. This revision is necessary to identify the area closed, the applicable gear type, and the target fishery exempted from the closure.

Section 679.24(f) is revised to include reference to the Central GOA flatfish fisheries. This revision is necessary to require vessels using nonpelagic trawl gear to directed fish for flatfish in the Central GOA to comply with the modified nonpelagic trawl gear requirements in this section.

Figure 5 to part 679 is revised to add an illustration and definition of the Marmot Bay Tanner Crab Protection Area. This area includes Federal waters westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees 0 minutes N latitude and 58 degrees 15 minutes N latitude. Use of trawl gear, other than pelagic trawl gear used in directed fishing for pollock, is prohibited at all times in the Marmot Bay Tanner Crab Protection Area. This revision is necessary to identify the Marmot Bay Tanner Crab Protection Area as described in Amendment 89. Due to the revision of Figure 5 to part 679, the table of coordinates for this figure is revised to reflect the removal of letters that identified coordinate locations on several, already established protection areas. In addition, the coordinates in the current table are corrected from degree, minutes, seconds to degree, decimal minutes. This revision improves the clarity of the table coordinates in combination with the revised figure and ensures the correct coordinates are listed in the consistent format used for other closure areas in the regulations.

Figure 26 to part 679 is revised to show the 185-foot (56.4 m) limit for the lines connecting the elevated section of the sweeps to the door bridles and to the net or headline extensions. The revision to Figure 26 is necessary to illustrate the changes to the construction requirements for modified nonpelagic trawl gear.

**Summary of Changes From Proposed Rule**

NMFS did not make any changes in this final rule to the regulatory text contained in the proposed rule.

**Comments and Responses**

NMFS received 8 letters of comment containing 11 unique comments on the notice of availability for Amendment 89 (78 FR 33040, June 3, 2013) and on the proposed rule (78 FR 36150, June 17, 2013). A summary of the comments received and NMFS' responses follow.

*Comment 1:* We support the requirement to use modified nonpelagic trawl gear to protect bottom habitat and to reduce unobserved Tanner crab mortality.

*Response:* NMFS acknowledges the comment.

*Comment 2:* Members of the Central GOA flatfish fishing fleet cannot afford any more closures. The number of fishing locations for trawl vessels operating in flatfish fisheries is limited due to Steller sea lion protection measures and other habitat protection measures. Operators of trawl vessels, especially trawl vessels in the rock sole fishery, need the ability to move to areas that would be closed by this rule to avoid salmon and halibut bycatch and to have a protected location for efficient and safe fishing, especially for smaller trawl vessels. The Marmot Bay Area closure should be modified to apply only to the deep water flatfish complex fishery so that other flatfish fisheries, such as the rock sole fishery, would not be affected. This modification would protect Tanner crab, which is more likely to occur in deeper, mud habitat affected by the deep water flatfish complex fishery. The rock sole fishery occurs in shallower, rocky habitat, and does not impact Tanner crab.

*Response:* The Council considered the effects on the shallow-water flatfish fishing fleet when developing its recommendations for this action (see Section 3.1 of the Area Closures EA/RIR/IRFA). In the Area Closures EA/

RIR/IRFA, the crab survey, crab fishery, and shallow-water flatfish fishery figures show that the location of Tanner crab overlaps with the location of the shallow-water flatfish fishery in the closure area (see Figures 14, 15, 25, and Color Figure 5 in the Area Closures EA/RIR/IRFA). Limiting the closure area to the deep-water flatfish complex fishery will not remove the potential adverse effects of the shallow-water flatfish complex fishery on Tanner crab, including trawl effects on benthic habitat and Tanner crab injury and mortality.

NMFS determined that the Council's recommended closure of the Marmot Bay Area is necessary and appropriate based on: (1) The high rate of Tanner crab mortality by vessels using nonpelagic trawl gear in the Marmot Bay Area relative to other areas in the Central GOA; (2) the observation of mature male and female Tanner crab populations within the Marmot Bay Area; (3) the occurrence of known Tanner crab habitat within the Marmot Bay Area; (4) the high rate of Tanner crab bycatch by vessels using trawl gear relative to pot gear within the Marmot Bay Area; and (5) the limited historical fishing in this area overlapping with the occurrence of Tanner crab, which reduces the economic impact on fishery participants while minimizing the adverse impacts to Tanner crab from nonpelagic trawl gear.

NMFS agrees with the commenter's assertion that avoiding salmon and halibut bycatch may include moving fishing activities to other locations and that having fewer locations to choose from may reduce fishing efficiency. However, only two to three percent of the annual nonpelagic trawl shallow-water flatfish catch, which includes the rock sole fishery, has occurred in the Marmot Bay Area compared to total shallow-water flatfish catch in Area 630, the area of the Central GOA affected by this rule (see Table 37 in the Area Closures EA/RIR/IRFA). Based on these data indicating limited historical flatfish fishing activity in the closure area, it is likely that these vessels can find efficient and safe locations outside the closure area to fish for rock sole and other flatfish species and avoid halibut and salmon bycatch.

*Comment 3:* The Marmot Bay Area closure area should be limited to Alaska Department of Fish & Game (ADF&G) statistical area 525807 and should not include ADF&G statistical area 515802. Statistical area 515802 has bountiful rock sole that is harvested with nonpelagic trawl gear at 17 to 30 fathoms, and in our experience this catch has not resulted in Tanner crab bycatch. Tanner crab occurs primarily in the western portion of the proposed Marmot Bay Area, which includes statistical area 525807. Closing the eastern portion of the proposed Marmot Bay Area, which includes ADF&G statistical area 515802, to the rock sole fishery is unjust and will have an economic impact on fishing businesses, the processors dependent on deliveries, and on the Kodiak community.

*Response:* The Council carefully considered the boundaries of the Marmot Bay Area to protect Tanner crab and understood the potential impact on shallow-water flatfish fishing, which includes rock sole. The Council considered closing only ADF&G statistical area 525807, but extended the closure area to include a portion of ADF&G statistical area 515802, based on data indicating that Tanner crab occur eastward of ADF&G statistical area 525807, which includes ADF&G statistical area 515802. The Council's final recommendation established the boundaries of the Marmot Bay Area closure based on crab survey data that showed Tanner crab occurring in ADF&G statistical area 515802 (see section 3.1.4 of the Area Closure EA/RIR/IRFA). Specifically, information in Color Figures 2, 4, 5, and 6 in the Area Closures EA/RIR/IRFA show groundfish catch in ADF&G statistical area 515802. Color Figure 5 shows that shallow-water flatfish catch occurs in ADF&G statistical area 515802. Figure 26 in the Area Closures EA/RIR/IRFA shows the directed Tanner crab fishery occurring in much of ADF&G statistical area 515802 where shallow-water flatfish fishing has also occurred (see also Color Figure 5). The Council and NMFS determined that it is likely that Tanner crab occur in this location and may be impacted by nonpelagic trawling based on the amount of Tanner crab prohibited species catch (PSC) observed in nonpelagic trawls used in flatfish fisheries the Marmot Bay Area, including the rock sole fishery (see Table 17 in the Area Closures EA/RIR/IRFA) and based on the potential effects of nonpelagic trawl gear on benthic habitat. The Council considered the potential economic effects on vessels participating in the nonpelagic trawl fishery compared to the benefits to Tanner crab resources in making their closure recommendation. Under this rule, NMFS anticipates that the imposition of this trawl closure will not prevent the GOA groundfish fisheries from achieving the annual total allowable catch (TAC) for these species. Because catch from the Marmot Bay Area represents only a small proportion of the total groundfish catch by vessels using nonpelagic trawl gear, NMFS anticipates that vessels will be able to catch the TACs of groundfish species that have been caught in the Marmot Bay Area in neighboring areas not closed to this gear. For more detail, see Section 3.1 and Section 6.6 of the Area Closures EA/RIR/IRFA and the preamble to the proposed rule (June 17, 2013; 78 FR 36150).

*Comment 4:* We disagree with the statement in the proposed rule that there are no conservation measures currently in the GOA to address adverse interactions with Tanner crab by groundfish vessels using trawl gear. Tanner crab is designated as a prohibited species in the groundfish fisheries, which requires immediate discard. This is a conservation measure. Nonpelagic trawl closures to protect king crab and to protect Steller sea lions also protect Tanner crab. In 1989, the EA/RIR/IRFA prepared for extending the king crab closures under Amendment 18 to the GOA groundfish FMP indicates that these king crab closures protected about 75 percent of the Tanner crab stocks year-round.

*Response:* The preamble of the proposed rule states that no specific conservation measures exist in the Central GOA to address adverse interactions with Tanner crab by vessels using trawl gear to directed fish for groundfish. NMFS made this statement because this rule implements conservation measures specifically developed to address adverse effects on Tanner crab from the groundfish fisheries. The Marmot Bay Area is specifically intended to minimize Tanner crab bycatch and effects on their habitat to the extent practicable. NMFS agrees that other conservation measures taken to protect habitat, marine mammals, or other crab species also may have beneficial effects on Tanner crabs, but none of these measures were specifically developed for that purpose. While the designation of Tanner crab as a prohibited species prevents groundfish fishermen from retaining the species, the designation alone does not provide any limit on the total amount of Tanner crab caught as bycatch or provide any other protection from potential adverse effects of groundfish fisheries.

*Comment 5:* The potential benefits to Tanner crab from the Marmot Bay Area closure would be so small that the effect on the stock and the Tanner crab fishery would be immeasurable. The observed Tanner crab mortality in the Central GOA trawl fishery is less than 0.4 percent of the assessed crab population in the Central GOA. Depending on the

assumptions made, the estimated number of male Tanner crabs saved from implementing the closure area is 435 to 163 crabs. The allowable Tanner crab bycatch rate in the GOA scallop fishery is 0.5 percent of total crab stock abundance based on the most recent survey data when the GOA Tanner crab fishery is closed and 1.0 percent when the GOA Tanner crab fishery is open. Why are these Tanner crab bycatch rates in the scallop fishery acceptable, but the Federal nonpelagic groundfish trawl fishery is held to a more restrictive Tanner crab bycatch rate?

*Response:* The purpose of this action is to provide additional protection to GOA Tanner crab from the potential adverse effects of groundfish fisheries. To that end, the Council and NMFS examined various areas in which Tanner crab and groundfish fishing overlap in the GOA and considered whether to close these areas year-round or seasonally to pot and/or trawl gear. The Council and NMFS considered the beneficial impacts of the Marmot Bay Area closure on Tanner crab resources with the potential economic costs on participants in the nonpelagic trawl groundfish fisheries that will be excluded from this area. Though the rate of bycatch and number of crabs potentially saved is less than under the scallop fishery, the Council found that the closure area is practicable for minimizing Tanner crab bycatch in the groundfish fisheries.

Consistent with National Standards 1, 5, and 9, the Council and NMFS determined that the Marmot Bay Area closure, relative to other closure areas considered, balances the requirement to minimize bycatch to the extent practicable while continuing to allow the GOA groundfish fisheries the opportunity to achieve optimal yield efficiently. Though the potential impact on Tanner crab mortality in the closure area is small in relation to the entire Tanner crab stock in the GOA, the Council determined and NMFS agrees that the Marmot Bay Area closure will benefit Tanner crab through a reduction in PSC and unobserved mortality while minimizing the economic impact on participants in nonpelagic trawl fisheries. Moroever, data shows limited historical flatfish fishing activity in the closure area, and it is likely that these vessels can find efficient and safe locations outside the closure area to continue fishing. (See Section 6.5.2 of the Area Closures EA/RIR/IRFA.)

National Standard 9 states that conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. In establishing the Marmot Bay Area closure, the Council and NMFS determined what Tanner crab bycatch management measures were practicable for the GOA groundfish fisheries. The Council and NMFS have not established a Tanner crab bycatch rate that applies to all Federal fisheries. Instead, the Council and NMFS have developed management measures for the various Federal fisheries that minimize bycatch to the extent practicable for that fishery. Tanner crab bycatch in the scallop dredge fishery is controlled through the use of crab bycatch limits. The Scallop FMP does not include provisions defining ''prohibited species,'' thus the distinction made under the Groundfish FMPs between bycatch and PSC does not apply to this (or other) non-groundfish FMPs regulating the BSAI and GOA (See Section 3.4.2 of the Area Closures EA/RIR/IRFA). Section 3.4.2 of the Area Closures EA/RIR/IRFA provides information showing that although Tanner crab bycatch limits for the scallop fishery are set at 0.5 percent or 1.0 percent of the total Tanner crab stock abundance estimate based on most recent survey data, estimated catch of Tanner crab in the Kodiak Northeast District scallop fishery between 2000 and 2009 has been significantly less than the annual Tanner crab bycatch limit.

*Comment 6:* Using closures to protect crab stocks has not improved crab stock abundance. The Kodiak king crab closures have been in place for 20 years with no improvement of the king crab stock abundance. NMFS should consider other methods to improve Tanner crab stocks, such as those employed by other Councils, including opening historical closures and using management methods that are more effective at balancing the Magnuson-Stevens Act national standards.

*Response:* The purpose of this action is not to improve Tanner crab stock abundance, but to further protect Tanner crab stocks from adverse effects of GOA groundfish fisheries. The Council and NMFS may use different management measures to protect a PSC species, including controlling or reducing bycatch in the groundfish fisheries or reducing impacts on the habitat that supports the PSC species. The selection of the management measure(s) depends on what is practicable to minimize the bycatch of the species and to reduce potential adverse effects.

The closure of the Marmot Bay Area and the modified trawl gear requirement were based on the analysis of alternative methods to reduce adverse effects on Tanner crab to the extent practicable and based on the best available information. The opening of existing closure areas would require analysis of the potential impacts of opening closed areas to determine if the closures are not effective at reducing Tanner crab bycatch to the extent practicable and the other environmental and economic effects that may occur with the opening of an existing closure area. The analyses for this rule did not examine the effects of King crab closures on Tanner crab stocks, modifying existing closure areas, or other measures to improve the abundance of Tanner crab stocks as those actions are not within the scope of this action.

This rule is consistent with effective past measures the Council has recommended, and NMFS has implemented, to reduce impacts of nonpelagic trawl gear on crab populations, directly by limiting injury and mortality, and indirectly by reducing potential adverse habitat impacts. Because overall Tanner crab bycatch in the GOA groundfish fisheries can be small in relation to the Tanner crab population, but potentially concentrated in certain areas or at certain times, the Council and NMFS determined that time and area closures are more effective than Tanner crab PSC limits in reducing the potential impacts of nonpelagic trawl gear on Tanner crab stocks. Additionally, this rule requires that nonpelagic trawl gear used in the directed flatfish fisheries in the Central GOA be modified to raise portions of the gear off the sea floor. This requirement can reduce the adverse effects of nonpelagic trawl gear on Tanner, snow, and red king crabs by reducing the unobserved mortality and injury of these species.

*Comment 7:* We recommend that the name of the Marmot Bay Tanner Crab Protection Area be changed to the Marmot Bay Area to be consistent with names used in the Central GOA for other nonpelagic trawl closure areas and to remove the incorrect impression that this closure area is the only conservation measure for Tanner crab.

*Response:* The Council and NMFS selected the name for this closure area to reflect the sole purpose of the area, which is to protect Tanner crab. NMFS determined that there is no legal or policy reason that requires the use of similar names for the various crab closure areas in the Central GOA. Additionally, the other crab closure areas in the Central GOA were established to protect king crab and have names that reflect the primary reason for the closure (i.e., Kodiak Island Type I, II and III closures).

Finally, NMFS determined that the name for the area indicates the purpose of the area, which is helpful in understanding the reason for the action for anyone not familiar with the development of the closure area. For these reasons, NMFS determined that the changes suggested by the comment are not necessary.

*Comment 8:* The preamble to the proposed rule on page 36151, second column, seventh paragraph lists the actions taken by the Council to protect Tanner crabs. Action 2 in the list incorrectly states that modified ''pelagic'' trawl gear would be required when directed fishing for flatfish in the Central GOA. Action 2 should have stated that the Council recommended the use of modified ''nonpelagic'' trawl gear when directed fishing for flatfish in the Central GOA.

*Response:* NMFS agrees that the preamble of the proposed rule at the location cited by the commenter incorrectly used the term ''modified pelagic trawl gear,'' where the term ''modified nonpelagic trawl gear'' should have been used. NMFS reviewed the preamble, as well as the proposed regulatory text, and found that this was the only location in the proposed rule that made an incorrect reference to modified pelagic trawl gear. Because the proposed rule is clear that the modifications being proposed apply to nonpelagic trawl gear used when directed fishing for flatfish in the Central GOA, NMFS determined that the proposed rule provided the public with a clear understanding of the changes being proposed and the public could reasonably comment on them.

*Comment 9:* We support the Marmot Bay Tanner Crab Protection Area closure to reduce the impacts of the trawl fleet on Tanner crab resources.

*Response:* NMFS acknowledges the comment.

*Comment 10:* NMFS should implement enhanced observer coverage in ADF&G Statistical Area 525702 and in the Chiniak Gully. These are locations of potentially high Tanner crab bycatch in the groundfish fisheries, and the restructured observer program implemented in 2013 will not provide the additional data needed to understand the impact on Tanner crab resources in these locations.

*Response:* As noted in detail in the preamble to the proposed rule (June 17, 2013; 78 FR 36150), the Council included as part of its recommendation for improved estimates of Tanner crab bycatch that NMFS ''incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations'' in three specific areas near Kodiak, AK, including the ones referenced by the commenter. The restructured observer program was effective beginning January 1, 2013 (November 21, 2012; 77 FR 70062). NMFS has determined that the Council's recommendation has been implemented by the restructured observer program and no additional observer specific measures are needed with GOA Amendment 89. NMFS will use the regulations and deployment process established under the restructured Observer Program to obtain fishery catch and bycatch data without specifying additional observer coverage requirements in specific areas in the GOA. Establishing additional observer requirements in specific areas would result in biased data, which does not meet the data quality goals under the restructured Observer Program. Collecting Tanner crab bycatch data under the provisions of the restructured Observer Program meets the intent of the restructured observer program to provide unbiased observer data to better inform fisheries management. In order to ensure that the Council's intent to obtain better observer data is being met, NMFS will present an observer deployment plan annually for the Council's review.

*Comment 11:* We agree with NMFS' decision to rely on Tanner crab bycatch data from the restructured observer program rather than requiring enhanced observer coverage in certain areas. The restructured observer program will provide science-based data needed to understand Tanner crab bycatch in all of the fleets that may affect Tanner crab. Adding an area-specific requirement for observing Tanner crab bycatch would undermine the unbiased collection of bycatch data that is expected from the restructured observer program.

*Response:* NMFS acknowledges the comment.

## Classification

The NMFS Assistant Administrator determined that Amendment 89 to the GOA groundfish FMP is necessary for the conservation and management of the GOA groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

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

### *Final Regulatory Flexibility Analysis*

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act (RFA). This FRFA incorporates the initial regulatory flexibility analyses (IRFAs) prepared for the proposed rule and addresses the applicable requirements of section 604 of the RFA. A statement of the need for, and objectives of, this final rule is described in the preamble to this rule and is not repeated here. This information also was provided in the preamble to the proposed rule.

### Comments on the IRFAs

NMFS published a proposed rule to implement Amendment 89 and a regulatory amendment on June 17, 2013 (78 FR 36150), with comments invited through July 17, 2013. NMFS received 8 letters of comment from the public on Amendment 89 and the proposed rule. None of these comments specifically addressed the IRFAs, but Comments 2 and 3 expressed concerns about the potential cost of the Marmot Bay Area closure to commercial fishermen. NMFS' responses to these comments explain that the Council and NMFS considered potential costs to industry and recommended the smallest possible closure area to accomplish the objective of crab protection measures. In addition, the Council noted, and NMFS agrees that fishermen prohibited from fishing in the Marmot Bay Area have other fishing opportunities elsewhere in the GOA.

No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

### Number and Description of Small Entities Regulated by the Action

The determination of the number and description of small entities regulated by these actions is based on small business size standards established by the Small Business Administration (SBA). On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $ 4.0 million to $ 19.0 million, Shellfish Fishing from $ 4.0 million to $ 5.0 million, and Other Marine Fishing from $ 4.0 million to $ 7.0 million. Id., at 37400 (Table 1).

Pursuant to the RFA, and prior to SBA's June 20, 2013, final rule, two IRFAs were prepared for these actions using SBA's former size standards. The IRFAs were summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS has reviewed the IRFAs in light of the new size standards. NMFS did not conduct a re-analysis of how many entities directly regulated by these actions

would be categorized as small entities under the new size standards. However, for purposes of this FRFA, all directly regulated entities are assumed to be small entities. This is a conservative approach for this analysis.

*Action 1: Area Closure*

The entities directly regulated by Action 1 are those entities that participate in the groundfish fisheries using trawl gear in the Marmot Bay Area (except for pelagic trawl vessels directed fishing for pollock). From 2003 through 2009, 68 vessels used nonpelagic trawl gear in the Central GOA and therefore would be directly regulated by Action 1. Of these 68 vessels, 26 vessels had gross earnings of less than $4.0 million so were categorized as small entities in the IRFA. For purposes of this FRFA, all 68 nonpelagic trawl vessels directly regulated by Action 1 are assumed to be small entities.

*Action 2: Trawl Modification*

The entities directly regulated by Action 2 are those entities that participate in the Central GOA flatfish fisheries. For Action 2, 51 vessels participated in the Central GOA flatfish fisheries in one or more years between 2003 and 2010, making these vessels directly regulated under Action 2. Of these 51 vessels, two catcher/processors and eight catcher vessels that participated in the Central GOA flatfish fisheries had gross earnings of less than $4.0 million so were categorized as small entities in the IRFA. For purposes of this FRFA, all 51 vessels are assumed to be small entities.

*Action 3: Correction to Gear Construction Requirements*

For Action 3, the same 51 vessels that are assumed to be small entities under Action 2 also would be small entities for Action 3. Because Action 3 also affects gear construction by flatfish vessels fishing in the Bering Sea subarea, this FRFA includes small entity information published in the Final Rule for Amendment 94 to the BSAI groundfish FMP (75 FR 61642, October 6, 2010). In 2007, all of the catcher/processors (CPs) targeting flatfish in the Bering Sea subarea (46 vessels) exceeded the $4.0 million threshold that the SBA used at that time to define small fishing entities. Due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the RFA at that time, but due to the increase in the SBA small business size standard some of these vessels may not exceed the new threshold and may be considered small entities. Based on their combined groundfish revenues, none of the four catcher vessels that participated in 2007 exceeded the SBA's small entity threshold, and these vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then categorize them as large entities, but there is no available information regarding the ownership status of these vessels at an entity level. Because NMFS is unable to conduct a thorough re-analysis of how many entities directly regulated by these actions would be categorized as small entities under the new size standards, all the vessels directly regulated by Action 3 are assumed to be small entities. Therefore, the FRFA may overestimate the number of small entities directly regulated by Action 3.

**Recordkeeping, Reporting, and Compliance Requirements**

These actions will not change recordkeeping and reporting requirements. Vessel operators will be required to comply with the specified area closure and gear requirements. Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on

**Small Entities**

An FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. ''Significant alternatives'' are those that achieve the stated objectives for the action, consistent with prevailing law with potentially lesser adverse economic impacts on small entities, as a whole.

*Action 1: Area Closure*

During consideration of this action, the Council evaluated a number of alternatives to the preferred alternative, including (1) no action, (2) four permanent or seasonal area closures in which trawl or pot fishing would be prohibited, (3) four area closures in which trawl and pot fishing would only be allowed with increased observer coverage, (4) an exemption to the closures for vessels using pelagic trawl gear, and (5) an exemption to the closures for vessels using modified nonpelagic trawl gear. The ''No Action'' alternative would not have met the Council's objectives for this action, and would have provided no specific conservation measures in the GOA to address adverse interactions with Tanner crab by trawl and pot sectors targeting groundfish.

None of the other alternatives would have both met the objectives of the action and had a smaller adverse economic impact on small entities when compared with the preferred alternative. Under the second alternative described above, the impact on these vessels would be proportional to the extent that they rely on the area for target fishing, the extent to which they are able to offset catches foregone in the closed areas, and the net costs of making the adjustment. Observer data suggests that the nonpelagic trawl fisheries would be most impacted by area closures. Seasonal closures might reduce the adverse impacts on groundfish fishermen as vessels could fish in the areas for the remainder of the year, but would not meet the objectives of the action. Under the third alternative above, costs would increase to owners of 90 vessels that continued to fish in the closure areas that are not already required to have 100 percent or greater observer coverage. Table 57 in the Area Closures EA/RIR/IRFA shows the increased costs for observer coverage for vessels fishing in the proposed closure area. The fourth alternative, to exempt vessels using pelagic trawl gear from the Marmot Bay Area closure, would have the same effect as the preferred alternative because vessels using pelagic trawl gear in this area are directed fishing for pollock. The preferred alternative would prevent the use of pelagic trawl gear to directly fish for other groundfish species in this area, further protecting the area to any potential effects of pelagic trawl gear on habitat. Under the fifth alternative, an exemption to the closures for vessels using modified nonpelagic trawl gear, the average cost of the modification to fishermen using net reels, for the gear configuration used in the Central GOA, is initially approximately $12,600 and approximately $3,000 in annual maintenance. For vessels using main line winches to set and haul back the modified sweeps there may also be one-time costs for modifying the vessel to accommodate the sweep modification of $20,000 to $25,000 or higher, depending on current vessel configuration. This cost may be offset if the modification extends the useful life of the sweeps and reduces the frequency with which new gear must be purchased (See Section 6.6 of the Area Closures EA/RIR/IRFA).

Six of the eight public comments asked for the Marmot Bay Area to be either reduced or not implemented to

provide for continued fishing in the area for shallow-water flatfish and particularly rock sole. The Council and NMFS considered the balance between forgone access to this area for shallow-water flatfish fishing and the potential protection of Tanner crab resources in the Central GOA and determined that the benefits of protecting Tanner crab from the effects of trawling outweighed the loss of this location for shallow-water flatfish harvests. As noted in the response to Comment 2, only two to three percent of the annual nonpelagic trawl shallow-water flatfish catch, which includes the rock sole fishery, has occurred in the Marmot Bay Area compared to total shallow-water flatfish catch in Area 630 (see Table 37 in the Area Closures EA/RIR/IRFA). No changes were made in the final rule from the proposed rule.

*Actions 2 and 3: Trawl Modification and Gear Construction*

The Council considered two alternatives for Actions 2 and 3. The first is the ''No Action'' alternative, which does not require any modification to trawl sweeps for vessels targeting GOA flatfish, nor does it change the maximum length for the lines that connect the doors and the net to the elevated portions of the sweeps from 180 feet to 185 feet. The other alternative, the Council's preferred alternative, requires vessels targeting Central GOA flatfish to modify their gear to reduce bottom contact. For all vessels, the additional cost of purchasing the modified gear appears to be $3,000 to $3,400, annually. Additionally, for vessels with net reels, there may be an additional cost for keeping replacement elevating devices on board, at a cost of approximately $700 for a full replacement set. For vessels requiring a structural change to accommodate the modified trawls sweeps and continue to maintain the same catch rates, estimates provided by industry range from $20,000 to $25,000 (see Section 2.11 of the Trawl Sweep EA/RIR/IRFA).

The preferred alternative also extends the areas exempted from elevating devices on the net bridles and door bridles from 180 feet to 185 feet to accommodate hammerlocks attached to net and door bridles. This extension of the exempt areas applies to trawl sweep gear modifications in the Bering Sea and Central GOA. This change to the gear construction requirement allows for accommodating the connecting devices with the current trawl sweeps, thus saving industry costs by constructing the gear using standardized parts. Based upon the best available scientific information, the aforementioned analyses, as well as consideration of the objectives of the action, it appears that there are no alternatives to this action with potentially less adverse economic impact while also accomplishing the stated objectives of the Magnuson-Stevens Act and other applicable statutes.

Taking public comment into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 2014.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.2, add paragraph (6) to the definition of ''Directed fishing'', revise the definition of ''Federally permitted vessel'' and add in alphabetical order the definition of ''Marmot Bay Tanner Crab Protection Area'' to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Directed fishing* means:

* * * * *

(6) *With respect to the harvest of flatfish in the Central GOA Regulatory Area,* for purposes of modified nonpelagic trawl gear requirements under §§ 679.7(b)(9) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of shallow-water flatfish, deep-water flatfish, rex sole, arrowtooth flounder, and flathead sole that is greater than the retained amount of any other trawl fishery category as defined at § 679.21(d)(3)(iii).

* * * * *

*Federally permitted vessel* means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS and GOA nonpelagic trawl fishery pursuant to § 679.7(b)(9), § 679.7(c)(5), and § 679.24(f); and for purposes of VMS requirements.

* * * * *

*Marmot Bay Tanner Crab Protection Area* means a habitat protection area of the Gulf of Alaska specified in Figure 5 to this part that is closed to directed fishing for groundfish with trawl gear, except directed fishing for pollock by vessels using pelagic trawl gear.

* * * * *

■ 3. In § 679.7, add paragraph (b)(9) to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(b) * * *

(9) Conduct directed fishing for flatfish, as defined in § 679.2, with a vessel required to be federally permitted in the Central GOA Regulatory Area, as defined in Figure 3 to this part, without meeting the requirements for modified nonpelagic trawl gear specified at § 679.24(f) and illustrated in Figures 25, 26, and 27 to this part.

* * * * *

■ 4. In § 679.22, add paragraph (b)(3) to read as follows:

**§ 679.22 Closures.**

* * * * *

(b) * * *

(3) *Marmot Bay Tanner Crab Protection Area.* No federally permitted vessel may fish with trawl gear in the Marmot Bay Tanner Crab Protection Area, as described in Figure 5 to this part, except federally permitted vessels directed fishing for pollock using pelagic trawl gear.

* * * * *

■ 5. In § 679.24, revise the introductory text of paragraph (f) to read as follows:

**§ 679.24 Gear limitations.**

* * * * *

(f) *Modified nonpelagic trawl gear.* Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting area of the BS or in the Central GOA Regulatory Area or directed fish for groundfish with nonpelagic trawl gear in the Modified Trawl Gear Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards:

* * * * *

■ 6. Revise Figure 5 to part 679 to read as follows:

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Figure 5 to Part 679– Kodiak Island Type 1, 2, and 3 Nonpelagic Trawl Closure Status and Marmot Bay Tanner Crab Protection Area (see § 679.22(b)(1) and (b)(3))

a. Map

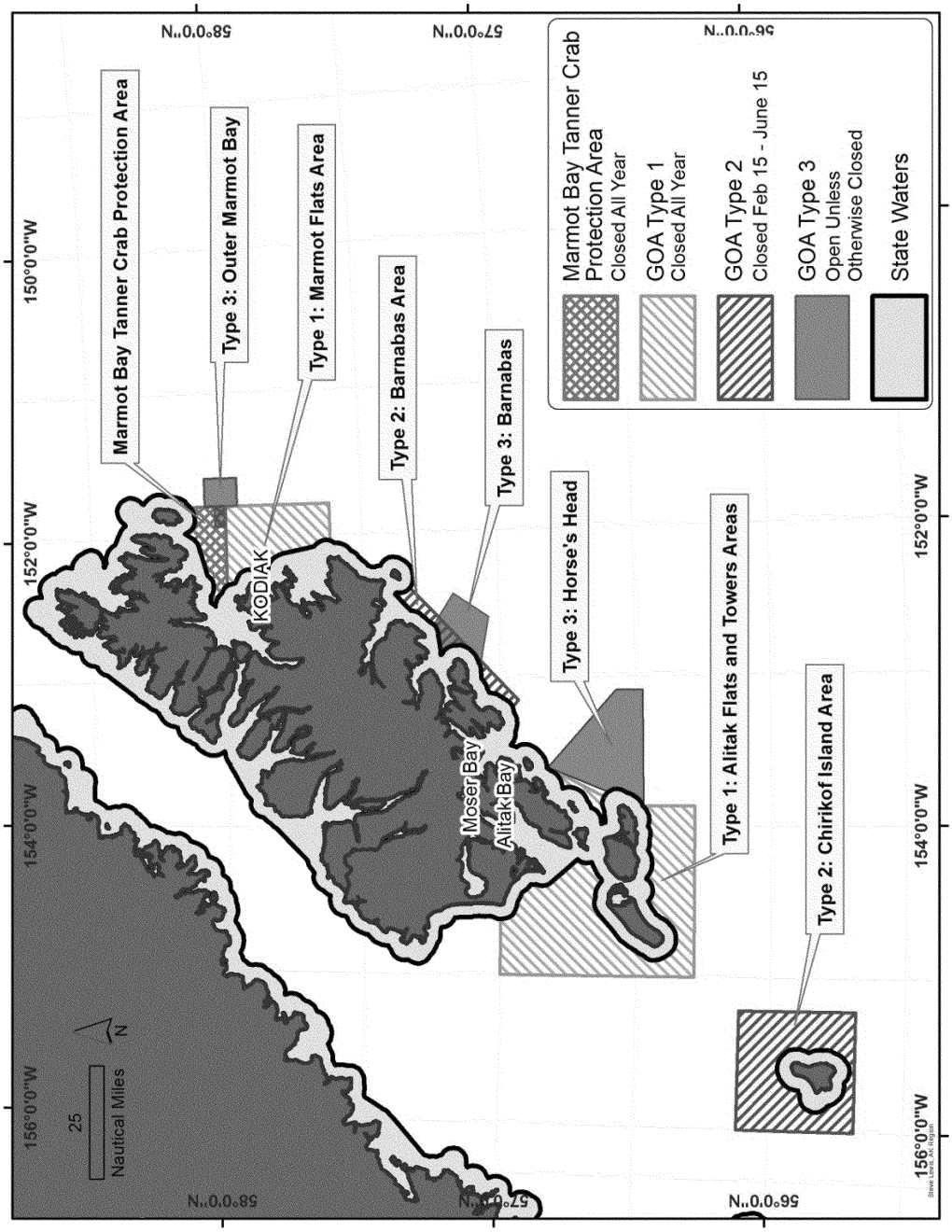


Figure 5 to Part 679. Kodiak Island Areas Closed to Nonpelagic Trawl Gear and Marmot Bay Tanner Crab Protection Area
b. Coordinates

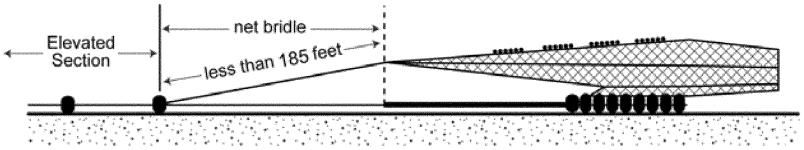
| Name and Description of Reference Area | North Latitude / West Longitude | Reference Point |
|---|---|---|
| **Alitak Flats and Towers Areas** | All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed: | |
| | 56°59.4'N, 154°31.1'W | Low Cape |
| | 57°00.0'N, 155°00.0'W | |
| | 56°17.0'N, 155°00.0'W | |
| | 56°17.0'N, 153°52.0'W | |
| | 56°33.5'N, 153°52.0'W | Cape Sitkinak |
| | 56°54.5'N, 153°32.5'W | East point of Twoheaded Island |
| | 56°56.0'N, 153°35.5'W | Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape. |
| | 56°59.4'N, 154°31.1'W | Low Cape |
| **Marmot Flats Area** | All waters enclosed by a line connecting the following five points in the clockwise order listed: | |
| | 58°00.0'N, 152°30.0'W | |
| | 58°00.0'N, 151°47.0'W | |
| | 57°37.0'N, 151°47.0'W | |
| | 57°37.0'N, 152°10.1'W | Cape Chiniak, then along the coastline of Kodiak Island to |
| | 57°54.5'N, 152°30.0'W | North Cape. |
| | 58°00.0'N, 152°30.0W | |
| **Chirikof Island Area** | All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed: | |
| | 56°07.0'N, 155°13.0'W | |
| | 56°07.0'N, 156°00.0'W | |
| | 55°41.0'N, 156°00.0'W | |
| | 55°41.0'N, 155°13.0'W | |
| | 56°07.0'N, 155°13.0'W | |
| **Barnabas Area** | All waters enclosed by a line connecting the following six points in the counter clockwise order listed: | |
| | 57°00.0'N, 153°18.0'W | Black Point. |
| | 56°56.0'N, 153°09.0'W | |
| | 57°22.0'N, 152°18.5'W | South Tip of Ugak Island |
| | 57°23.5'N, 152°17.5'W | North Tip of Ugak Island |
| | 57°25.3'N, 152°20.0'W | Narrow Cape, thence, along the coastline of Kodiak Island |
| | 57°04.2'N, 153°30.0'W | Cape Kasick to |
| | 57°00.0'N, 153°18.0'W | Black Point, including inshore waters |
| **Marmot Bay Tanner Crab Protection Area** | All waters of the EEZ enclosed by straight lines across EEZ waters and following the boundary of the State of Alaska waters connecting the following six points clockwise in the order listed: | |
| | 58°15.0'N, 152°30.0'W | |
| | 58°15.0'N, 151°47.0'W | |
| | 58°00.0'N, 151°47.0'W | |
| | 58°00.0'N, 152°30.0W | |
| | 58°15.0'N, 152°30.0'W | |

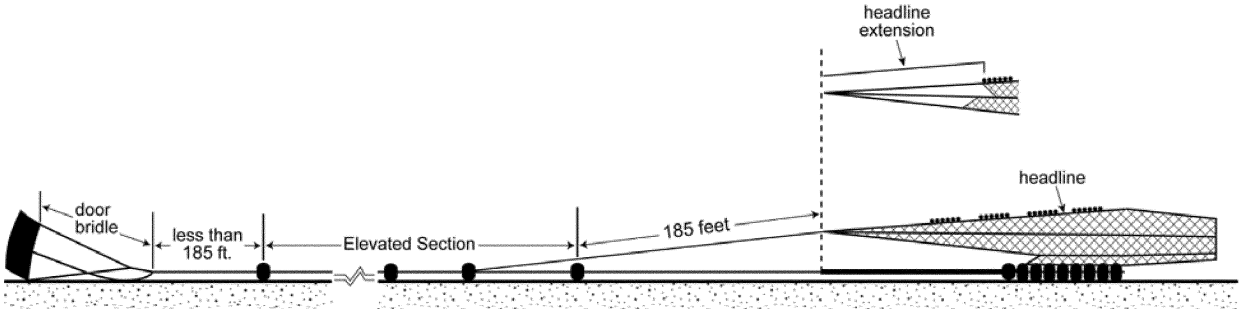
■ 7. Revise Figure 26 to part 679 to read as follows:

Figure 26 to Part 679—Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating devices in the elevated section for gear with net bridles no greater than

185 feet in length. The bottom image shows the location of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles no greater than 185 feet in length.




[FR Doc. 2014–00780 Filed 1–15–14; 8:45 am]

**BILLING CODE 3510–22–C**

# Proposed Rules

Federal Register
Vol. 79, No. 11
Thursday, January 16, 2014

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 1211

**[Document No. AMS–FV–11–0074; PR–1A]**

**RIN 0581–AD24**

### Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order; Reopening and Extension of Comment Period on Proposed Establishment of a Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Reopening and extension of comment period.

**SUMMARY:** Notice is hereby given that the comment period on the proposed rule establishing an industry-funded promotion, research and information program for hardwood lumber and hardwood plywood is reopened and extended. The comment period is also extended for the new hardwood lumber and hardwood plywood information collection requirements by the Office of Management and Budget (OMB) for the operation of the proposed program. The proposed Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order, was submitted to the U.S. Department of Agriculture (USDA) by the Blue Ribbon Committee, a committee of 14 hardwood lumber and hardwood plywood industry leaders representing small and large manufacturers and geographically distributed throughout the United States.

**DATES:** The comment period for the proposed rule published November 13, 2013 (78 FR 68298), is extended. Comments must be received by February 18, 2014. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by February 18, 2014.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including the name and address if provided, in the above office during regular business hours or can be viewed at *http://www.regulations.gov*.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate; ways to minimize the burden, including the use of automated collection techniques or other forms of information technology; or any other aspect of this collection of information; should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (301) 334–2891; or facsimile: (301) 334–2896; or email: *Patricia.Petrella@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued on November 6, 2013, and published in the **Federal Register** on November 13, 2013 (78 FR 68298). That rule proposed the establishment of an industry-funded promotion, research and information program for hardwood lumber and hardwood plywood.

USDA received congressional inquiries and letters from industry members requesting that the comment period be extended to allow additional time for interested persons to review the proposal and submit comments.

USDA is reopening and extending the comment period an additional 30 days to allow interested persons more time to review the proposed rule, perform a complete analysis, and submit written comments.

**Authority:** This notice is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Dated: January 10, 2014.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2014–00733 Filed 1–13–14; 4:15 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2014–0020; Directorate Identifier 2013–CE–039–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; British Aerospace (Operations) Limited Airplanes

**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 British Aerospace (Operations) Limited Model HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes that would supersede an existing AD. 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 cracking of the forward main landing gear yoke pintle resulting from corrosion pits leading to stress corrosion. 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 March 3, 2014.

**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 BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 1292 675207, fax: +44 1292 675704; email: *RApublications@baesystems.com;* Internet: *http://www.jetstreamcentral.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0020; 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:** Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@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–2014–0020; Directorate Identifier 2013–CE–039–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

On December 16, 1986, we issued AD 87–02–04, Amendment 39–5497 (51 FR 47211, December 31, 1986). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 87–02–04, Amendment 39–5497 (51 FR 47211, December 31, 1986), there has been a reported failure of the main landing gear (MLG) on a Jetstream Series 3100 airplane. An investigation revealed stress corrosion cracking of the MLG yoke pintle housing as a root cause of the MLG failure.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2013–0208, dated September 10, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Prompted by occurrences of the main landing gear (MLG) yoke pintle housing cracking, the United Kingdom Civil Aviation Authority (UK CAA) issued AD G–003–01–86 to require repetitive inspections to identify any crack in the yoke pintle housing on MLG fitted to Jetstream 3100 aeroplanes in accordance with BAE Systems (Operations) Ltd Service Bulletin (SB) 32–A–JA851226, and depending on findings, corrective action. After that AD was issued, an occurrence of Jetstream 3100 MLG failure was reported after landing. The subsequent investigation revealed stress corrosion cracking of the MLG yoke pintle housing as a root cause of the MLG failure. Furthermore, the investigation report recommended a review of the effectiveness of UK CAA AD G–003–01–86 in identifying cracks in the yoke pintle housing on MLG fitted to Jetstream 3100 aeroplanes.
>
> Degradation of the surface protection by abrasion can occur when the forward face of the yoke pintle rotates against the pintle bearing, which introduces corrosion pits and, consequently, stress corrosion cracking.
>
> This condition, if not detected and corrected, could lead to structural failure of the MLG, possibly resulting in loss of control of the aeroplane during take-off or landing runs.
>
> To provide protection of the affected area of the MLG assembly spigot housing, BAE Systems (Operations) Ltd issued SB 32–JM7862 to provide instructions for installation of a protective washer, fitted at the forward spigot on both, left hand (LH) and right hand (RH), MLG. Consequently, BAE Systems (Operations) Ltd issued SB 32–A–JA851226 at Revision 5 to provide additional accomplishment instructions for Non-destructive testing inspection (NDT) of MLG equipped with the protective washer installed in accordance with BAE Systems (Operations) Ltd SB 32–JM7862 and to introduce reference to MLG manufacturer APPH Ltd SB 32–19 at Revision 4, providing instructions for re-protection of the yoke pintle.
>
> For the reasons described above, this AD retains the requirements of AD G–003–01–86, which is superseded, and requires implementation of revised inspection requirements, and depending on findings, corrective action. This AD introduces an optional modification, which constitutes terminating action for the inspections required by this AD.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0020.

## Relevant Service Information

British Aerospace (Operations) Limited issued Jetstream Series 3100 & 3200 Service Bulletin No. 32–A–JA851226, Revision 5, dated April 30, 2013; Jetstream Service Bulletin 32–JA880340, dated January 6, 1989; which references British Aerospace Dynamics Division Service Bulletin 32–36, dated July 20, 1988; APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013; and APPH Ltd. Service Bulletin No. 32–40, Revision 1, dated February 2003. 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 44 products of U.S. registry. We also estimate that it would take about 14 work-hours per product to comply with the inspection requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $52,360, or $1,190 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $5,000, for a cost of $5,850 per

product for repairs. 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 removing Amendment 39–5497 (51 FR 47211, December 31, 1986), and adding the following new AD:

**British Aerospace (Operations) Limited:** Docket No. FAA–2014–0020; Directorate Identifier 2013–CE–039–AD.

**(a) Comments Due Date**

We must receive comments by March 3, 2014.

**(b) Affected ADs**

This AD supersedes AD 87–02–04, Amendment 39–5497 (51 FR 47211, December 31, 1986).

**(c) Applicability**

This AD applies to British Aerospace (Operations) Limited Model HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes, all serial numbers, certificated in any category.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking of the forward main landing gear (MLG) yoke pintle that resulted from corrosion pits leading to stress corrosion. We are issuing this AD to prevent failure of the MLG, which could result in loss of control of the airplane during take-off or landing.

**(f) Actions and Compliance**

Unless already done, do the following actions specified in paragraphs (f)(1) through (f)(11) of this AD:

(1) *For airplanes previously affected by AD 87–02–04, Amendment 39–5497 (51 FR 47211, December 31, 1986):* At the next 1,200 MLG flight cycle repetitive inspection required by AD 87–02–04 or within the next 12 months after the last 1,200 MLG flight cycle repetitive inspection required by AD 87–02–04, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 MLG flight cycles or 12 months, whichever occurs first, do a nondestructive testing (NDT) inspection of each MLG assembly cylinder attachment spigot housing following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(2) *For airplanes not previously affected by AD 87–02–04, Amendment 39–5497 (51 FR 47211, December 31, 1986):* Within the next 300 MLG flight cycles after the effective date of this AD or within the next 3 months after the effective date of this AD or at the next overhaul of the MLG after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 MLG flight cycles or 12 months, whichever occurs first, do a NDT inspection of each MLG assembly cylinder attachment spigot housing following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(3) *For all airplanes:* Within 300 landings after a heavy or abnormal landing, conduct a NDT inspection of each MLG assembly cylinder attachment spigot following Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(4) *For all airplanes:* If any crack is found during any inspection required in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, before further flight, take all necessary corrective actions following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(5) *For all airplanes:* Within 300 MLG flight cycles or 3 months, whichever occurs first after each NDT inspection required in paragraph (f)(1) or (f)(2) of this AD, as applicable, and repetitively thereafter at intervals not to exceed 300 MLG flight cycles or 3 months, whichever occurs first, do a visual inspection of each MLG following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(6) *For all airplanes:* If any discrepancy is found during any visual inspection required in paragraph (f)(5) of this AD, before further flight, take all necessary corrective actions following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–19, Revision 4, dated April 3, 2013, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(7) *For all airplanes with a MLG incorporating a microswitch hole:* Within the next 10,600 MLG flight cycles since new and repetitively thereafter at intervals not to exceed 1,200 MLG flight cycles, do a NDT inspection of each MLG microswitch hole following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–40, Revision 1, dated February 2003 as referenced in Part C, paragraph (2)(b) of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(8) *For all airplanes:* If any crack is found during any NDT inspection required in

paragraph (f)(7) of this AD, before further flight, take all necessary corrective actions following the Accomplishment Instructions in APPH Ltd. Service Bulletin No. 32–40, Revision 1, dated February 2003, as referenced in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–A–JA851226, Revision 5, dated April 30, 2013.

(9) *For all airplanes:* Doing all necessary corrective actions required in paragraphs (f)(4), (f)(6), and (f)(8) of this AD does not constitute terminating action for the inspections required by this AD.

(10) *For all airplanes:* Modification of each MLG cylinder following BAE Systems (Operations) Ltd. Service Bulletin 32–JA880340, original issue, dated January 6, 1989, constitutes terminating action for the inspections required by this AD for that MLG.

(11) *For all airplanes:* The compliance times in paragraphs (f)(2), (f)(3), (f)(5), and (f)(7) of this AD are presented in flight cycles (landings). If the total flight cycles have not been kept, multiply the total number of airplane hours time-in-service (TIS) by 0.75 to calculate the cycles. For the purposes of this AD:

(i) 100 hours TIS × .75 = 75 cycles; and

(ii) 1,000 hours TIS × .75 = 750 cycles.

**(g) Credit for Actions Done in Accordance With Previous Service Information**

This AD allows credit for the initial inspection required in paragraph (f)(7) of this AD if done before the effective date of this AD following APPH Ltd. Service Bulletin 32–40, at Initial Issue dated June 21, 1989.

**(h) 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: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

**(i) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0208, dated September 10, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0020. For service information related to this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 1292 675207, fax: +44 1292 675704; email: *RApublications@baesystems.com;* Internet: *http://www.jetstreamcentral.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 8, 2014.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–00764 Filed 1–15–14; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2013–0483; FRL–9905–20–Region 7]**

## Approval and Promulgation of Implementation Plans and Title V Operating Permit Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the state of Iowa. These revisions will amend the Iowa air quality rules to eliminate state-only emissions testing procedures and adopt Federal methods; to reduce notification time for portable plant relocations, and allow electronic submittals of notifications; to update air quality definitions to be consistent with Federal definitions, and to place into rule the specific procedures for conducting emissions testing.

EPA is also proposing to approve revisions to the Iowa Title V Operating Permits Program to revise the definition of ''EPA Reference Method,'' and to adopt by reference the revised Title V Periodic Monitoring Guidance.

**DATES:** Comments on this proposed action must be received in writing by February 18, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0483 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: algoe-eakin.amy@epa.gov.*

3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Road, Lenexa, Kansas 66219.

4. *Hand Delivery or Courier.* Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Road, Lenexa, Kansas 66219. Such deliveries are only accepted during the Regional Office's normal hours of operations. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942, or by email at *algoe-eakin.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's revision to the SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rules based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA

receives adverse comments on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 23, 2013.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2014–00655 Filed 1–15–14; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 85a

**[Docket No. CDC–2014–0001; NIOSH–271]**

**RIN 0920–AA51**

## Occupational Safety and Health Investigations of Places of Employment

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking; technical amendments.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to amend its regulations pertaining to occupational safety and health investigations of places of employment conducted by the National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC), to update outdated terminology and strike references to obsolete government offices or divisions. These proposed changes will not affect current practices.

**DATES:** Comments must be received by March 17, 2014.

**ADDRESSES:** *Written comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2014–0001; NIOSH–271) or Regulation Identifier Number (0920–AA51) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For detailed instructions on submitting public comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Teresa Schnorr Ph.D., Director, NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS); 4676 Columbia Parkway, Cincinnati, OH 45226; 513–841–4428 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This notice is organized as follows:

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Major Provisions
C. Costs and Benefits
II. Public Participation
III. Statutory Authority
IV. Summary of Proposed Rule
V. Regulatory Assessment Requirements

### I. Executive Summary

#### *A. Purpose of Regulatory Action*

The purpose of this proposed rule is to make minor technical changes to HHS regulations in 42 CFR part 85a, pertaining to occupational safety and health investigations of places of employment. Proposed amendments to the existing rule include striking references to obsolete government offices or agencies, updating the proper NIOSH office from which to request specific reports of investigations, and correcting outdated terms such as ''motion pictures.'' Obsolete terms and outdated language in Part 85a were identified during the agency's retrospective analysis of existing regulations, in accordance with Executive Order 13563.

#### *B. Summary of Major Provisions*

Proposed amendments to 42 CFR part 85a include the following: § 85a.2 (alphabetize definitions and strike definitions of ''NIOSH Regional Office,'' and ''BOM (Bureau of Mines)'' and remove reference to ''Public Health Service'' within the definition of ''NIOSH''), § 85a.4 (clarify that the union at the place of employment must be notified of the investigation, and strike reference to BOM), § 85a.5 (replace ''motion pictures or videotapes'' with ''video recordings'' and ''Human Subjects Review Board'' with ''Institutional Review Board''), and § 85a.8 (replace ''NIOSH Regional Consultant for Occupational Safety and Health'' with ''NIOSH Education and Information Division.''

#### *C. Costs and Benefits*

Because HHS is proposing no substantive changes to 42 CFR part 85a, there would be no changes made to current practices. Therefore, there are no costs or benefits associated with this rulemaking.

### II. Public Participation

Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. This notice of proposed rulemaking is published in conjunction with a direct final rule (DFR) because HHS finds that the updates to Part 85a add clarity to the regulation and are non-controversial; HHS does not expect to receive any significant adverse comments on this rulemaking. If significant adverse comments are received, HHS will publish a notice in the **Federal Register** to withdraw the companion DFR. A final rule will subsequently be published, which will include the Agency's response to comments. If HHS does not receive any significant adverse comments on this notice of proposed rulemaking or the companion DFR within the specified comment period, we will publish a notice in the **Federal Register** confirming the effective date of the final rule within 30 days after the close of the public comment period and withdraw this notice of proposed rulemaking.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed. You may submit comments on any topic related to this notice of proposed rulemaking.

### III. Statutory Authority

Subsection 20(b) of the Occupational Safety and Health (OSH) Act of 1970 authorizes the Secretary of Health and Human Services to make inspections and question employers and employees as provided in section 8 of the OSH Act in order to carry out the Secretary's functions and responsibilities under section 20 [29 U.S.C. 669; 29 U.S.C. 657]. Section 8(g)(2) instructs the Secretary to prescribe such regulations as are deemed necessary to carry out the responsibilities of the agency to conduct inspections of an employer's establishment. Sections 103 and 501 of the Federal Mine Safety and Health (FMSH) Act of 1977 authorize the Secretary to make inspections and investigations at coal mines in order to conduct research as may be appropriate

to improve working conditions [30 U.S.C. 813(a)] and 951, respectively].

## IV. Summary of Proposed Rule

The provisions in Part 85a govern procedures NIOSH follows in conducting safety and health investigations at places of employment. The proposed amendments described below are all non-substantive and would have no practical effect on NIOSH procedures or practices, but are being proposed in accordance with Executive Order 13563, section 6, which requires that Federal agencies conduct retrospective analyses of existing rules. In conducting the analysis, NIOSH discovered that certain terms and references in Part 85a were outdated.

*Section 85a.1 Applicability*

Section 85a.1 states that the provisions in Part 85a pertain to investigations of places of employment conducted by NIOSH, pursuant to the statutory authorities noted above. The section also affirms that the provisions in this part do not apply to activities covered by HHS regulations in 42 CFR part 85. HHS proposes no changes to this section.

*Section 85a.2 Definitions*

Section 85a.2 offers definitions for terms used in this part. HHS proposes a number of changes to this section. First, HHS proposes to remove the paragraph designations and instead to list the terms alphabetically. Next, HHS proposes to strike the definitions of BOM (Bureau of Mines) and NIOSH Regional Office from § 85a.2, because BOM is obsolete and because the addresses of the regional offices referenced here are no longer relevant to this rule. The phrase ''Public Health Service'' is proposed to be stricken from the definition of ''NIOSH,'' and the definition of ''FMSH Act,'' is teased apart from the existing definition of ''OSH Act'' and is proposes as a stand-alone definition. None of the changes to this section would be substantive.

*Section 85a.3 Authority for Investigations of Places of Employment*

Section 85a.3 establishes procedures by which NIOSH authorized representatives may enter a place of employment for the purpose of conducting investigations under the OSH Act and the FMSH Act. This section also establishes that investigations will be conducted in a reasonable manner. HHS proposes a minor change to this section to correct punctuation.

*85a.4 Procedures for Initiating Investigations of Places of Employment*

Section 85a.4 states that the NIOSH authorized representative will contact an official representative of the place of employment prior to a site visit. The NIOSH official will also notify a representative of the appropriate State agency, the local union at the place of employment, the appropriate OSHA Assistant Regional Director, and the appropriate MSHA District Office. HHS proposes minor changes to § 85a.4(a)(2) to strike unnecessary language specifying which union official must be notified, thereby clarifying that the union must be notified; a proposed change to § 85a.4(a)(4) would remove reference to the obsolete Bureau of Mines. Section 85a.4(b) is edited to correspond with the change in paragraph (a)(2). One final proposed change to § 85a.4(c) would add the term ''or organizations'' to specify that the investigating NIOSH official would notify the individuals or organizations referenced above. HHS proposes no further changes to this section.

*Section 85a.5 Conduct of Investigations of Places of Employment*

Section 85a.5 establishes the procedures NIOSH representatives will follow to conduct a workplace investigation. HHS proposes amending this section to replace the outdated terms ''motion pictures or videotapes'' with ''video recordings'' and ''Human Subjects Review Board'' with ''Institutional Review Board,'' and correcting ''contact agreement,'' which should properly be ''contract agreement'' in paragraph (b)(2). HHS proposes no further changes to this section.

*Section 85a.6 Provision of Suitable Space for Employee Interviews and Examinations*

Section 85a.6 requires that the employer, owner, operator, or agent in charge at the investigated place of employment must provide a suitable space for the NIOSH representative to conduct private interviews. HHS proposes no changes to this section.

*Section 85a.7 Imminent Dangers*

Section 85a.7 authorizes the NIOSH representative to advise the employer, owner, operator, or agent in charge, any employees who appear to be in danger, and any of the individuals or agencies identified in § 85a.4 that an imminent danger exists. HHS proposes no changes to this section.

*Section 85a.8 Reporting of Results of Investigations of Places of Employment*

Section 85a.8 states that NIOSH will make specific reports of investigations available to the employer, owner, operator, or agent in charge, as well as to those individuals or agencies identified in § 85a.4. HHS proposes amending § 85a.8(a)(2) to strike reference to ''NIOSH Regional Consultant for Occupational Safety and Health'' and replace it with the name of the office that will make specific reports available, the ''NIOSH Education and Information Division.'' HHS proposes no further changes to this section.

## V. Regulatory Assessment Requirements

*A. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f) of E.O. 12866. The proposed amendments in this notice would alphabetize the definitions section, strike reference to the former Bureau of Mines and NIOSH Regional Office, update where specific reports of investigations may be obtained, and update language used to describe ''motion pictures.'' Further, because this proposed rule is administrative and would not affect the cost of the activities authorized by Part 85a, HHS has not prepared an economic analysis. Accordingly, the Office of Management and Budget (OMB) has not reviewed this rulemaking.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. Because no substantive changes are being made to 42 CFR Part 85a as a result of this action, HHS certifies that this proposed rule has ''no significant economic impact upon a substantial number of small entities'' within the meaning of

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. Data collection and recordkeeping requirements for the health investigations of places of employment program receive OMB approval on an as-needed basis. The proposed amendments in this rulemaking would not impact the collection of data.

*D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or Tribal governments in the aggregate, or by the private sector. For 2013, the inflation adjusted threshold is $150 million.

*F. Executive Order 12988 (Civil Justice)*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

*G. Executive Order 13132 (Federalism)*

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

*I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

*J. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

**List of Subjects in 42 CFR Part 85a**

Archives and records, Employee management relations, Hazardous substances, Health hazards, Health records, Industry, Investigations, Labor, Mine safety and health, Occupational injury, Occupational safety and health, Reporting and recordkeeping requirements, Research, Respiratory diseases, Right of entry, Toxic substances, Unions.

**Proposed Rule**

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 85a as follows:

## PART 85a—OCCUPATIONAL SAFETY AND HEALTH INVESTIGATIONS OF PLACES OF EMPLOYMENT

■ 1. The authority citation for part 85a continues to read as follows:

**Authority:** Sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g) and sec. 508, 83 Stat. 803; 30 U.S.C. 957.

■ 2. Revise § 85a.2 to read as follows:

### § 85a.2 Definitions.

Any term defined in the Occupational Safety and Health Act of 1970 or the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the Acts. As used in this part:

*Assistant Regional Director* means any one of the ten Occupational Safety and Health Administration Assistant Regional Directors for Occupational Safety and Health.

*Employee* has the same meaning as stated in the OSH Act and for the purposes of this part includes *miner* as defined in the FMSH Act.

*Employer* has the same meaning as stated in the OSH Act and for the purposes of this part includes *operator* as defined in the FMSH Act.

*FMSH Act* means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

*Informed consent* means the knowing consent of an individual or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary to such consent include:

(1) A fair explanation of the procedures to be followed, and their purposes, including identification of any procedures which are experimental;

(2) A description of any attendant discomforts and risks reasonably to be expected;

(3) A description of any benefits reasonably to be expected;

(4) A disclosure of any appropriate alternative procedures that might be advantageous for the subject;

(5) An offer to answer any inquiries concerning the procedures; and

(6) An instruction that the person is free to withdraw his consent and to discontinue participation in the investigation any time without prejudice to the subject.

*Investigation* means research projects, experiments, demonstrations, studies, and similar activities of NIOSH which are conducted under section 20 of the OSH Act and section 501 of the FMSH Act.

*Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure.

*MSHA District Office* means any one of the Mine Safety and Health Administration's District Offices.

*NIOSH* means the National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention, Department of Health and Human Services.

*NIOSH authorized representative* means a person authorized by NIOSH to

conduct investigations of places of employment, including any person that is fulfilling a contract agreement with NIOSH or is serving as an expert or consultant to NIOSH pursuant to the Act.

*OSH Act* means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

*Place of employment* means any coal or other mine, factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by any employee of an employer.

■ 3. Amend § 85a.4 by revising paragraphs (a)(2) and (4), (b), and (c) to read as follows:

**§ 85a.4 Procedures for initiating investigations of places of employment.**

(a) * * *

(2) The local union at the place of employment, if any;

* * * * *

(4) The appropriate MSHA District Office when investigations are conducted under the FMSH Act.

(b) Advance notice of site visits will not be given to the place of employment or local union at the place of employment when, in the judgment of the NIOSH authorized representatives, giving such notice would adversely affect the validity and effectiveness of an investigation. Those individuals and organizations specified in § 85a.4(a)(1), (a)(3), and (a)(4) will be notified prior to the initiation of such a site visit. After the site visit has been initiated, and, as soon as possible thereafter, the NIOSH authorized representatives will contact the organizations specified in § 85a.4(a)(2) concerning the nature and details of the site visit.

(c) In those instances where site visits are not necessary to the conduct of an investigation, the NIOSH authorized representatives will contact an official representative of the place of employment either verbally or through a written communication and provide the details of why an investigation of the place of employment is being conducted. If appropriate, the NIOSH authorized representatives will contact those individuals or organizations stipulated in paragraphs (a)(1) through (4) of this section about the nature and details of the investigation.

■ 4. Amend § 85a.5 by revising paragraphs (b)(2) and (d) to read as follows:

**§ 85a.5 Conduct of investigations of places of employment.**

* * * * *

(b) * * *

(2) In those instances where the NIOSH authorized representative is a person fulfilling a contract agreement with NIOSH or is serving as an expert or consultant to NIOSH pursuant to the Act, the employer, owner, operator or agent in charge at the place of employment may, after advising the NIOSH contractor or consultant in writing, elect to withhold information deemed to be a trade secret from such a NIOSH authorized representative or prohibit entry into the area of the place of employment where such entry will reveal trade secrets. In those instances, where the subject information is needed or access to the area of the place of employment is necessary, in the judgment of NIOSH, to fulfill the goals of the investigation, NIOSH regular employees will then obtain the information or enter the subject area of the place of employment.

* * * * *

(d)(1) NIOSH authorized representatives are authorized: To collect environmental samples and samples of substances; to measure environmental conditions and employee exposures (including measurement of employee exposure by the attachment of personal sampling devices to employees with their consent); to take or obtain photographs, video recordings related to the purpose of the investigation; to employ other reasonable investigative techniques, including medical examinations, anthropometric measurements and standardized and experimental functional tests of employees with the informed consent of such employees; to review, abstract, and duplicate such personnel records as are pertinent to mortality, morbidity, injury, safety, and other similar studies; and to question and interview privately any employer, owner, operator, agency, or employee from the place of employment. The employer, owner, operator, or agency shall have the opportunity to review photographs, and video recordings taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

(2) Prior to the conduct of medical examinations, anthropometric measurements or functional tests of any employees, the NIOSH authorized representatives will obtain approval of the procedures to be utilized from the NIOSH Institutional Review Board and no employee examination, measurement or test will be undertaken without the informed consent of such employee.

* * * * *

■ 5. Revise § 85a.7 to read as follows:

**§ 85a.7 Imminent dangers.**

Whenever, during the course of, or as a result of, an investigation under this part, the NIOSH authorized representatives believe there is a reasonable basis for an allegation of an imminent danger, NIOSH will immediately advise the employer, owner, operator or agent in charge at the place of employment and those employees who appear to be in immediate danger of such allegation and will inform the agencies identified in § 85a.4(a) through (4).

■ 6. Amend § 85a.8 by revising paragraph (a)(2) to read as follows:

**§ 85a.8 Reporting of results of investigations of places of employment.**

(a) * * *

(2) All specific reports of investigations of each place of employment under this part will be available to the public from the NIOSH Education and Information Division, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

* * * * *

Dated: December 18, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–00530 Filed 1–15–14; 8:45 am]

**BILLING CODE 4163–18–P**

# Notices

Federal Register

Vol. 79, No. 11

Thursday, January 16, 2014

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

January 10, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by February 18, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

#### Rural Housing Service

*Title:* Single Family Housing Guaranteed Loan Program.

*OMB Control Number:* 0575–0179.

*Summary of Collection:* The Housing and Community Facilities Program (HCFP), herein referred to as the ''Agency,'' is a credit agency for the Rural Housing Service (RHS) of the U.S. Department of Agriculture. The Agency offers supervised credit programs to build modest housing and essential community facilities in rural areas. Section 517(d) of Title V of the Housing Act of 1949, as amended, provides the authority for the Secretary to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas. The Single Family Housing Guaranteed Loan Program (SFHGLP) was authorized under the Cranston-Gonzalez National Affordable Housing Act. The purpose of SFHGLP is to assist low and moderate-income individuals and families in acquiring or constructing a single-family residence in a rural area with loans made by private lenders.

*Need and Use of the Information:* Information is collected from both a potential homebuyer and lender. To participate in the program, lenders must submit to standards which ensure the loan objectives of the SFHGLP are met. The lender submits qualifications to the Agency and enters into an agreement that outlines both the lender and Agency's commitments and responsibilities under the guaranteed program. Information from a homebuyer includes financial documents such as confirmation of household income, assets and liabilities, a credit record, evidence the homebuyer has adequate repayment ability for the loan amount requested and if the condition and location of the property meet program guidelines. All information collected is vital for the Agency to determine if borrowers qualify for all assistance for which they are eligible.

This is a reinstatement with changes of a previously approved collection.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 3,581.

*Frequency of Responses:* Reporting: Monthly; Quarterly; Annually.

*Total Burden Hours:* 789,139.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–00646 Filed 1–15–14; 8:45 am]

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–TM–13–0092]**

### Notice of Request for a New Collection of Three Additional Marketing Channels for Local Food

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice, new collection.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval of a new collection, titled: Local Food Directories and Survey, from the Office of Management and Budget (OMB). Upon approval, we request that this collection be merged into OMB 0581–0169, National Farmers Market Directory and Survey with Modules, which was approved April 19, 2013.

**DATES:** Comments on this document must be received by March 17, 2014 to be assured of consideration.

**ADDRESSES:** You may submit written, faxed, or internet comments to:

- Edward Ragland, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 4523 South Building, Ag Stop 0269, Washington, DC 20250–0269.
- *Internet: www.regulations.gov.*
- *Fax:* (202) 690–0031.

All written comments should be identified with the document number AMS–TM–13–0092. All comments received will be available for public inspection during regular business hours at the same address. It is our intention to have all comments whether

submitted by mail or internet available for viewing on the Regulations.gov (*www.regulations.gov*) Internet site. Comments submitted will also be available for public inspection in person at USDA–AMS, Transportation and Marketing Programs, Marketing Services Division, Room 4523-South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received are requested to make an appointment in advance by calling (202) 720–8317.

**SUPPLEMENTARY INFORMATION:**

**Direct Marketing**

*Title:* Local Food Directories and Survey.

*OMB Number:* 0581–New.

*Expiration Date of Approval:* Three years from approval.

*Type of Request:* New collection for three additional marketing channels for local food.

*Abstract:* Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), AMS is responsible for conducting research to enhance market access for small-and medium sized farmers. The role of the Marketing Services Division (MSD) of AMS is to facilitate distribution of U.S. agricultural products. The division identifies marketing opportunities, provides analysis to help take advantage of those opportunities and develops and evaluates solutions including improving farmers markets and other direct-to consumer marketing activities.

On-farm markets, community supported agriculture (CSAs) as well as food hubs comprise an integral part of the urban/farm linkage and have continued to rise in popularity, mostly due to the growing consumer interest in obtaining fresh products directly from the farm. The use of these marketing channels has enabled farmers to receive a larger share of consumer's food dollar. On-farm markets, community supported agriculture (CSAs) and food hubs allow consumers to have access to locally grown, farm fresh produce, enables farmers the opportunity to develop a personal relationship with their customers, and cultivate consumer loyalty with the farmers. They are also providing greater access to fresh locally grown fruits and vegetables, as well as playing increasing role in encouraging healthier eating.

An *on-farm market* is an area of a facility affiliated with a farm where transactions between a farm market operator and customers take place. An on-farm market may operate seasonally or year-round. On-farm markets are an important component of direct marketing, adding value by offering customers a visit to the farm and the opportunity to purchase products from the people who grew them.

*CSA* is a another type of food-production and direct marketing relationship between a farmer or farmers and a group consumers who purchase ''shares'' of the season's harvest in advance of the growing season. The up-front working capital generated by selling shares reduces the financial risk to the farmer(s). Generally farmers receive better prices for their crops and, reduced marketing costs. Consumers benefit by receiving weekly delivery of fresh locally-grown fruits, vegetables, meats, eggs and other produce. They also benefit from the ability to collectively support the sustainability of local farmers.

*Food hub* is a business or organization that actively manages the aggregation, distribution, and marketing of source-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand. This marketing channel also allows farm operators to capture a larger share of consumers' food dollar.

This information will be used to build three web-based directories and describe the characteristics of on-farm markets, CSAs, and food hubs and to identify trends in their communities.

Topic areas in the survey:

—Characteristics and history of on-farm markets, CSAs and food hubs,
—types of products sold, including fresh, locally-grown produce,
—location of the markets,
—special events,
—marketing methods,
—participation in federal programs designed to increase consumption of fresh fruits, and vegetables.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.167 hours per response.

*Respondents:* Farm operators that operate on-farm stores, operators of Community Supported Agriculture, (CSA's), farm operations, and operators of food hubs.

*Estimated Number of Respondents:* 56,750.

*Estimated Total Annual Responses:* 2,125.

*Estimated Number of Responses per Respondent:* .037.

*Estimated Total Annual Burden on Respondents:* 355 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The information collected is used only by authorized employees of the USDA, AMS.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 10, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–00767 Filed 1–15–14; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. #AMS–CN–13–0091]**

### Recommendations of Advisory Committee on Universal Cotton Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) held meetings of the Universal Cotton Standards Advisory Committee in Raleigh, North Carolina on June 19, 20 and 21, 2013. This notice announces the Advisory Committee's recommendation to adopt USDA's HVI (High Volume Instrument) Cotton Trash Standards as Universal Standards and to change the frequency of Universal Cotton Standards Conferences from once every three years to once every four years. The meeting agenda, minutes, and recommendations from the Advisory Committee are posted at the following Web address: *http://www.ams.usda.gov/AMSv1.0/AdvisoryCommitteeonUniversalStandards.*

**DATES:** Comments must be received on or before February 18, 2014.

**ADDRESSES:** Interested persons are invited to submit comments concerning

the Advisory Committee's recommendation using the following procedures:

• *Internet: http://www.regulations.gov.*

• *Mail:* Comments may be submitted by mail to: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Comments should be submitted in triplicate. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments will be available for public inspection during regular business hours at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm.*

**FOR FURTHER INFORMATION CONTACT:** James Knowlton, Designated Federal Official, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 5, Memphis, TN 38133. Telephone (901) 384–3030, facsimile (901) 384–3032, or email Telephone (901) 384–3030, or email: *James.Knowlton@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

The purpose of the Universal Cotton Standards Advisory Committee is to consider any necessary changes to the Universal Cotton Standards and to review and approve freshly prepared sets of the Universal Cotton Grade Standards for conformity with the existing standards.

At the Universal Cotton Standards Conference on June 19–21, 2013, the Advisory Committee recommended revising the Universal Cotton Standards Agreement in regards to its recommendations of adopting a Universal HVI Cotton Trash Standard and changing the frequency of Universal Cotton Standards Conferences from once every three years to once every four years.

The Universal Cotton Standards Agreement is an Agreement between USDA, the U.S. cotton industry and overseas cotton associations of merchants and textile manufacturers that provides for the trading of U.S. cotton on the official standards of the U.S. for Upland cotton. Adoption of the Universal HVI Cotton Trash Standard will ensure that the USDA's cotton trash measurement serves as the internationally accepted universal language for cotton trash measurements. Adoption of the frequency of Universal Cotton Standards Conferences to be held once every four years will provide improved cost efficiency while continuing to provide the necessary framework for future considerations to the Universal Cotton Standards.

**Authority:** 7 U.S.C. 51–65.

Dated: January 10, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–00757 Filed 1–15–14; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–245, Negative QC Review Schedule

**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 the proposed collection.

Form FNS–245, is currently used in the Quality Control process for the Supplemental Nutrition Assistance Program. This is a revision of a currently approved collection in the Supplemental Nutrition Assistance Program and concerns the Negative QC Review Schedule.

**DATES:** Written comments must be received on or before March 17, 2014.

**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 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 through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Patrick Lucrezio, Chief, Quality Control Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. You may also download an electronic version of this notice at *http://www.fns.usda.gov/fsp/rules/regulations/default.htm* and comment via email at *SNAPHQ-Web@fns.usda.gov* or use the Federal e-Rulemaking 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 FNS office located at 3101 Park Center Drive, Room 822, Alexandria, VA 22302, during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday). All responses to this notice will be included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, copies or to view a draft version of the information collection form and instructions should be directed to SNAP QC at *SNAPHQ-QCIC@fns.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Negative Quality Control Review Schedule.

*OMB Number:* 0584–0034.

*Form Number:* FNS–245.

*Expiration Date:* December 31, 2016.

*Type of Request:* Revision of a currently approved collection.

Form FNS–245, Negative Case Action Review Schedule:

*Abstract:* Form FNS–245, Negative Case Action Review Schedule, is designed to collect quality control (QC) data and serve as the data entry form for Negative case action QC reviews in the Supplemental Nutrition Assistance Program (SNAP). New QC procedures for Negative cases (now referred to as Case and Procedural cases) went into effect for the 2012 QC review year. State agencies complete form FNS–245 for each Negative Case in their QC sample. SNAP has determined the form associated with the reporting of these cases needs to be updated to reflect the new name and reorganized in order to not only streamline the data elements being reported, but to also add nine data elements to more effectively and efficiently record what is now being reviewed. By streamlining the form's elements to make it more efficient, the additional elements are not expected to increase the collection's burden on State Agencies using the form. We are also requesting to rename this information collection from ''Negative QC Review Schedule'' to ''Case and Procedural Quality Control Review Schedule''.

The reporting and recordkeeping burden associated with the completion of form FNS–245, has decreased from approximately 177,351 hours to 121,784.1602 hours. The decrease in total burden is largely a result of the

decrease in total SNAP Negative case selection from 59,831 cases in FY2010 to 41,085 Case and Procedural cases in FY 2012.

*Affected Public:* State, Local & Tribal Governments.

*Number of Respondents:* 53 State Agencies.

*Number of Responses per Respondent:* 775.1887 Records.

*Total Annual Responses:* 41,085.

*Reporting Time per Response:* 2.9406 Hours.

*Estimated Annual Reporting Burden:* 120,814.5542 Hours.

*Number of Record Keepers:* 53.

*Number of Records per Record Keeper:* 775.1887 Records.

*Estimated Number of Records to Keep:* 41,085 Records.

*Recordkeeping Time per Response:* .0236 Hours.

*Total Estimated Recordkeeping:* 969.6060 Hours.

*Annual Recordkeeping and Reporting Burden:* 121,784.1602 Hours.

| Affected public | Instrument | Estimated number of respondents | Number of responses per respondent | Total annual responses | Hours per response | Annual burden hours |
|---|---|---|---|---|---|---|
| **Reporting Burden** | | | | | | |
| State agencies | FNS–245, Case and Procedural QC Review Schedule. | 53.00 | 775.1887 | 41,085 | 2.9406 | 120,814.5542 |
| Reporting Totals | | 53.00 | | 41,085 | | 120,814.5542 |
| **Recordkeeping Burden** | | | | | | |
| State agencies | Maintain Records | 53.00 | 775.1887 | 41,085 | 0.0236 | 969.6060 |
| Total Recordkeeping and Reporting Burden. | | 53.00 | | 82,170 | 2.9642 | 121,784.1602 |

Dated: January 9, 2014.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2014–00762 Filed 1–15–14; 8:45 am]

**BILLING CODE 3410–30–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of business meeting.

**DATE AND TIME:** Friday, January 24, 2014; 9:30 a.m. EST.

**PLACE:** 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

### Meeting Agenda

I. Approval of Agenda
II. Program Planning
- Consideration of Concept Paper for 2014 Briefing

III. Management and Operations
- Staff Director's Report

IV. State Advisory Committee (SAC) Appointments
- Mississippi

V. Adjourn Meeting

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: January 13, 2014.

**Marlene Sallo,**

*Staff Director.*

[FR Doc. 2014–00817 Filed 1–14–14; 11:15 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* South Pacific Tuna Act.

*OMB Control Number:* 0648–0218.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 41.

*Average Hours per Response:* Expressions of interest in the fishery: initial, 2 hours; renewal, 15 minutes; license applications, 1 hour; vessel monitoring system (VMS) registration, 45 minutes; catch report forms, 1 hour; unloading logsheets, 30 minutes.

*Burden Hours:* 402.

*Needs and Uses:* This request is for extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) collects vessel license, vessel registration, catch, and unloading information from operators of United States (U.S.) purse seine vessels fishing within a large region of the western and central Pacific Ocean, which is governed by the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. The Treaty, along with its annexes, schedules and implementing agreements, was signed in Port Moresby, Papua New Guinea, in 1987. This collection of information is required to meet U.S. obligations under the Treaty.

The Treaty authorizes United States (U.S.) tuna vessels to fish within fishing zones of a large region of the Pacific Ocean. The South Pacific Tuna Act of 1988 (16 U.S.C. 973–973r) and U.S. implementing regulations (50 CFR Part 300, Subpart D) authorize the collection of information from participants in the Treaty fishery. Vessel operators who wish to participate in the Treaty Fishery must submit annual vessel license and registration (including registration of VMS) units) applications and periodic written reports of catch and unloading of fish from licensed vessels. They are also required to ensure the continued operation of VMS units on board licensed vessels, which is expected to require periodic maintenance of the

units. The information collected is submitted to the Pacific Islands Forum Fisheries Agency (FFA) through the U.S. government, NOAA's National Marine Fisheries Service (NMFS). The license and registration application information is used by the FFA to determine the operational capability and financial responsibility of a vessel operator interested in participating in the Treaty fishery. Information obtained from vessel catch and unloading reports is used by the FFA to assess fishing effort and fishery resources in the region and to track the amount of fish caught within each Pacific island state's exclusive economic zone for fair disbursement of Treaty monies. Maintenance of VMS units is needed to ensure the continuous operation of the VMS units, which, as part of the VMS administered by the FFA, are used as an enforcement tool. If the information is not collected, the U.S. government will not meet its obligations under the Treaty, and the lack of fishing information will result in poor management of the fishery resources.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer: OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 10, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–00698 Filed 1–15–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Five-Year Records Retention Requirement for Export Transactions and Boycott Actions

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 17, 2014.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

All parties involved in export transactions and the U.S. party involved in a boycott action are required to maintain records of these activities for a period of five years. These records can include memoranda, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents and reports. The five-year record retention period corresponds with the five-year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five-year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the Export Administration Regulations prior to the expiration of the five-year statute of limitations.

### II. Method of Collection

No information is provided to BIS.

### III. Data

*OMB Control Number:* 0694–0096.

*Form Number(s):* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 184,800,892.

*Estimated Time per Response:* 1 second to 1 minute.

*Estimated Total Annual Burden Hours:* 528.

*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–00707 Filed 1–15–14; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; U.S.-Canada Albacore Treaty Reporting System

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 17, 2014.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be

directed to Craig Dangelo, (562) 980–4024 or *Craig.Dangelo@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The National Marine Fisheries Service (NMFS), West Coast Region, manages the United States (U.S.)—Canada Albacore Tuna Treaty of 1981 (Treaty). Owners of vessels that fish from U.S. West Coast ports for albacore tuna will be required to notify the National Marine Fisheries Service (NMFS) West Coast Region of their desire to be on the list of vessels provided to Canada each year indicating vessels eligible to fish for albacore tuna in waters under the jurisdiction of Canada. Additionally, vessel operators are required to report in advance their intention to fish in Canadian waters prior to crossing the maritime border as well as to mark their fishing vessels to facilitate enforcement of the effort limits under the Treaty. Vessel operators are also required to maintain and submit a logbook of all catch and fishing effort. The regulations implementing the reporting and vessel marking requirements under the Treaty are at 50 CFR part 300.172–300.176.

The estimated burden below includes hours to complete the logbook requirement, although it is assumed that most if not all of the respondents already complete the required logbook under the mandatory West Coast Highly Migratory Species Fishery Management Plan (HMS FMP), OMB Control No. 0648–0223. Duplicate reporting under the Treaty and HMS FMP is not required. Most years, there will be much less fishing (and thus less reporting) under the Treaty than the level on which the estimate is based.

## II. Method of Collection

Requests to be placed on the vessel eligibility list may be made in writing via mail, fax, by email, by telephone, or through online registration if available. Communications to comply with 'hail in' and 'hail out' requirements are made via ship to shore radio or via telephone and are compiled in an electronic database by Canada Department of Fisheries and Oceans. Summaries of hail reports are provided to NMFS on a periodic basis. Vessel marking requirements entail painting the letter 'U' immediately after the U.S. Coast Guard documentation identification number already on the vessel. Logbooks are maintained in pre-printed paper format and submitted via mail.

## III. Data

*OMB Control Number:* 0648–0492.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time per Response:* 5 minutes for the request to be placed on the eligible list per year, for required vessel markings and for logbook entries; 10 minutes for each set of two hail reports for border crossings per year.

*Estimated Total Annual Burden Hours:* 283.

*Estimated Total Annual Cost to Public:* $3,955 (recordkeeping/reporting costs).

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–00696 Filed 1–15–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Vessel Monitoring System Requirements in Western Pacific Fisheries

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 17, 2014.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for extension of a currently approved information collection.

As part of fishery management plans developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, owners of commercial fishing vessels in the Hawaii pelagic longline fishery, American Samoa pelagic longline fishery (only vessels longer than 50 feet), Northwestern Hawaiian Islands lobster fishery (currently inactive), and Northern Mariana Islands bottomfish fishery (only vessels longer than 40 feet) must allow the National Oceanic and Atmospheric Administration (NOAA) to install vessel monitoring system (VMS) units on their vessels when directed to do so by NOAA enforcement personnel. VMS units automatically send periodic reports on the position of the vessel. NOAA uses the reports to monitor the vessel's location and activities, primarily to enforce regulated fishing areas. NOAA pays for the units and messaging. There is no public burden for the automatic messaging; however, VMS installation and annual maintenance are considered public burden.

## II. Method of Collection

Automatic electronic submission.

## III. Data

*OMB Control Number:* 0648–0441.

*Form Number:* None.

*Type of Review:* Regular (revision of a currently approved information collection).

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 209.

*Estimated Time per Response:* 4 hours for installation or replacement of a VMS unit; 2 hours for annual maintenance.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Mandatory.

*Estimated Total Annual Burden Hours:* 478 (estimated 15 installations per year).

*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–00695 Filed 1–15–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Sanctuary System Business Advisory Council: Public Meeting

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council. The meeting is open to the public, and participants may provide comments at the appropriate time during the meeting.

**DATES:** The meeting will be held Wednesday, January 29, from 9:00 a.m. to 5:00 p.m. EST. Opportunity for public comment will be provided at 4:30. These times and the agenda topics described below are subject to change.

**ADDRESSES:** The meeting will be held in the Polaris Suite of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW., Washington, DC, 2004.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Moore, Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–7270, Fax: 301–713–0404; email: *elizabeth.moore@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Keys, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustains healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (Council) has been formed to provide advice and recommendations to the Director regarding the relationship of the ONMS with the business community. Additional information on the Council can be found at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

*Matters To Be Considered:* This is the first meeting of the Council and as such will be devoted to introductory presentations and discussions about the National Marine Sanctuary System and the members of the Council. The agenda is subject to change. The agenda is available at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

**Authority:** 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 7, 2014.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2014–00619 Filed 1–15–14; 8:45 am]

BILLING CODE 3510–NK–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XD086

### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Seattle, WA.

**DATES:** The meetings will be held February 3 through February 11, 2014. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Renaissance Hotel, 515 Madison Street, Seattle, WA.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Council will begin its plenary session at 8 a.m. on Wednesday, February 5, continuing through Tuesday, February 11, 2014. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 3 and continue through Wednesday, February 5, East Room. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, February 4 and continue through Saturday, February 8, Northwest Room. The Observer Advisory Committee will meet February 3, 8 a.m.–5 p.m., South Room. The Ecosystem Committee will meet Tuesday, February 4, at 8:30 a.m., Marion Room. The Enforcement Committee will meet February 4, 1 p.m.–4 p.m., Marion Room. The Bering Sea Canyon Workshop will meet February 3, 12:30 p.m.–5:30 p.m., Northwest Room. The Community Fishing Associations Workshop will meet February 10, 1 p.m.–6 p.m., South Room. All meetings are open to the public, except executive sessions.

*Council Plenary Session:* The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report (including review of Magnuson Stevens Act (MSA) legislation and review of Regional Operating agreement)

NMFS Management Report
ADF&G Report
USCG Report
IPHC Report
USFWS Report
Protected Species Report
2. Gulf (GOA) of Alaska pot cod sector participation—discussion paper
3. GOA of Alaska Tendering—update/discussion paper
4. Charter Halibut Common Pool proposal—review (T)
5. Definition of Fishing Guide—Final action
6. Grenadier Management—Final action
7. Bering Sea Aleutian Island (BSAI) Crab Bycatch Limits—Expanded Discussion paper
8. BSAI Halibut Prohibited Species Catch (PSC)—updated discussion paper
9. Community Development Quota (CDQ) Pacific cod fishery development—discussion paper
10. Aleutian Islands Pacific cod catcher vessel allocation/delivery—Update/Discussion paper
11. Steller Sea Lion (SSL) Environmental Impact Statement (EIS)—action as necessary (T)
12. Observer Program performance-review outline
13. Electronic monitoring-update
14. Observer program regulatory amendments—discussion paper
15. Observer Advisory Committee Report
16. Ecosystem approach Vision Statement—review
17. Bering Sea Fishery Ecosystem plan (FEP)—discussion paper
18. Chinook salmon Economic Data Report (EDR) from Alaska Fishery Science Center
19. Crab Modeling Workshop Report (SSC Only)
20. Groundfish and Crab Economic Stock Assessment Fishery Evaluation (SAFE) reports (SSC review)
21. Staff Tasking—Committees and Staff Tasking

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

1. Chinook EDR
2. BSAI Canyons Workshop
3. Crab Remodeling
4. Economic SAFES
5. Ecosystem Vision
6. Bering Sea FEP

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*. Background documents, reports, and analyses for review are posted on the Council Web site in advance of the meeting. The names and organizational affiliations of SSC members are also posted on the Web site.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date

Dated: January 13, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–00737 Filed 1–15–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD085**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold meetings of the Administrative Policy, Outreach and Education, Shrimp, Sustainable Fisheries/Ecosystem, Reef Fish, Mackerel, and Gulf SEDAR Management Committees; and a meeting of the Full Council. The Council will also hold an informal public question and answer session regarding agenda items and a formal public comment session.

**DATES:** The Council meeting will be held from 8:30 a.m. on Monday, February 3 until 4:30 p.m. on Thursday, February 6, 2014.

**ADDRESSES:** *Meeting address:* The meeting will be held at the Westin Galleria Hotel, 5060 W. Alabama Street, Houston, TX 77056; telephone: (713) 960–8100.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *doug.gregory@gulfcouncil.org.*

**SUPPLEMENTARY INFORMATION:** The items of discussion for each individual management committee agenda are as follows:

*Administrative Policy Committee, Monday, February 3, 2014, 8:30 a.m. until 10:30 a.m.*

Review of Draft Revised Administrative Handbook

*Outreach and Education Committee, Monday, February 3, 2014, 10:30 a.m. until 12 noon.*

1. Review of Stakeholder Communication Survey Results
2. Summary of December 6, 2013 Outreach and Education Advisory Panel Webinar
3. Review of Gulfwide Recreational Angler Participation Sessions

*Full Council—(Closed Session), Monday, February 3, 2014, 1:30 p.m. until 2 p.m.*

1. Report from NOAA General Counsel
2. Appointment of member to Ad Hoc Artificial Substrate Advisory Panel

*Shrimp Management Committee, Monday, February 3, 2014, 2 p.m. until 3 p.m.*

1. Review of Draft Options Paper for *Shrimp* Amendment 15—Status Determination Criteria for *Penaeid Shrimp* and Adjustments to the *Shrimp* FMP Framework Procedure
2. Discussion of ACL Adjustment and Accountability Measures for *Royal Red Shrimp*

*Sustainable Fisheries/Ecosystem Management Committee, Monday, February 3, 2014, 3 p.m. until 4 p.m.*

1. Scientific and Statistical Committee Recommendations and Discussion of Draft Framework Action—Update Tier 3 ACLS with Revised MRIP Landings
2. Discussion of Draft Framework Action to Define For-Hire Fishing in the Gulf of Mexico EEZ

*Reef Fish Management Committee, Monday, February 3, 2014, 4 p.m. until 5 p.m. and Tuesday, February 4, 2014, 8:30 a.m. until 5:30 p.m.*

1. Summary of the Joint Council Committee on South Florida Management Issues and the Ad Hoc *Goliath Grouper* Joint Council Steering Committee meetings.
2. NMFS Update on Current MRIP Estimates

3. Discussion of Public Hearing Draft Amendment 28—*Red Snapper* Allocation Analysis
4. Report of the Ad Hoc *Red Snapper* IFQ Advisory Panel
5. Discussion of Amendment 39—Recreational *Red Snapper* Regional Management
6. Discussion of Amendment 40 Options Paper—Sector Separation
7. Discussion on Final Action of Framework Action to Rescind Amendment 30B Permit Conditions
8. Discussion of Standing and Reef Fish Scientific and Statistical Committee Report
9. Discussion on Exempted Fishing Permits Related to Reef Fish

—Recess—

Immediately following recess will be the Informal Question & Answer Session on Gulf of Mexico fishery management issues.

*Mackerel Management Committee, Wednesday, February 5, 8:30 a.m. until 11 a.m.*

1. Final Action on CMP Amendment 20B Boundaries and Transit Provisions
2. Discussion of Options Paper for 2014 Joint Framework Action to Modify *Spanish Mackerel* ACL/ACT
3. Discussion of Purpose and Timing of Scoping Document for CMP Amendment 24—Reallocation of Gulf *King Mackerel* and Atlantic *Spanish Mackerel*
4. Discussion of Purpose and Timing of Scoping Document for CMP Amendment 26—Split Permits between the Gulf and South Atlantic for *Spanish and King Mackerel*

*Gulf SEDAR Committee, Wednesday, February 5, 2014, 11 a.m. until 12 noon*

1. Update on SEDAR 33: Gulf of Mexico *Gag and Greater Amberjack*
2. Update on SEDAR 38: Gulf of Mexico and South Atlantic King *Mackerel*
3. Update on SEDAR Steering Committee
4. Review of SEDAR Schedule

*Council Session Agenda, Wednesday, February 5, 2014, 1:30 p.m. until 5:30 p.m.*

1:30 p.m.–1:45 p.m.: Call to Order and Introductions, Adoption of Agenda and Approval of Minutes.

1:45 p.m.–4:30 p.m.: The Council will receive public testimony on Final Action—*Mackerel* Amendments 20B—Boundaries and Transit Provisions and on Final Action—Framework Action to Rescind Amendment 30B Permit Conditions. The Council will also hold an open public comment period regarding any other fishery issues or concerns. People wishing to speak before the Council should complete a public comment card prior to the comment period.

4:30 p.m.–4:45 p.m.: The Council will review and vote on Exempted Fishing Permits (EFP), if any.

4:45 p.m.–5:15 p.m.: The Council will receive a committee report from the Outreach and Education Management Committee.

5:15 p.m.–5:30 p.m.: The Council will receive a committee report from the Shrimp Management Committee.

*Council Session Agenda, Thursday, February 6, 2014, 8:30 a.m. until 4:30 p.m.*

8:30 a.m.–11:30 a.m.: The Council will receive a committee report from the *Reef Fish* Management Committee.

1 p.m.–1:30 p.m.: The Council will receive a committee report from the Sustainable Fisheries/Ecosystem Management Committee.

1:30 p.m.–2:30 p.m.: The Council will receive a committee report from the *Mackerel* Management Committee.

2:30 p.m.–3:30 p.m.: The Council will receive a committee report from the Administrative Policy Management Committee.

3:30 p.m.–4 p.m.: The Council will receive a committee report from the Gulf SEDAR Management Committee.

4 p.m.–4:30 p.m.: The Council will review Other Business items: Summary of Electronic Monitoring meeting, MREP Summary, and Discussion on the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: January 13, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–00736 Filed 1–15–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–P–2013–0063]**

### Grant of Interim Extension of the Term of U.S. Patent No. 5,593,823; INTERCEPT® Blood System for Plasma

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of interim patent term extension.

**SUMMARY:** The United States Patent and Trademark Office has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,593,823.

**FOR FURTHER INFORMATION CONTACT:** Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755; or by email to *Mary.Till@uspto.gov*.

**SUPPLEMENTARY INFORMATION:** Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On December 3, 2013, Cerus Corporation, the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 5,593,823. The patent claims the medical device INTERCEPT® Blood System for Plasma. The application indicates that a Premarket Approval Application (PMA) was submitted to the Food and Drug Administration (FDA) in four modules. The PMA Shell number BM120078 was assigned on December 5, 2012. The first module was received by the FDA on March 1, 2013, the second module was received on June 3, 2013, by the FDA, the third module was received by the FDA on September 3, 2013, and the fourth module was received by the FDA

on November 29, 2013. The medical device is currently undergoing regulatory review before the FDA for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the original expiration date of the patent, January 14, 2014, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,593,823 is granted for a period of one year from the original expiration date of the patent.

Dated: January 10, 2014.

**Andrew Hirshfeld,**

*Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office.*

[FR Doc. 2014–00723 Filed 1–15–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2013–ICCD–0139]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of a District Wide Implementation of a Professional Learning Community Initiative

**AGENCY:** Department of Education (ED), Institute of Education Sciences/National Center for Education Statistics (IES).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before February 18, 2014.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0139 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E107, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For questions related to collection activities or burden, please call Katrina Ingalls, 703–620–3655 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Evaluation of a District Wide Implementation of a Professional Learning Community Initiative.

*OMB Control Number:* 1850–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 403.

*Total Estimated Number of Annual Burden Hours:* 214.

*Abstract:* This study aims to address the need for systematic information about district-wide implementation of professional learning communities (PLCs) as a critical element in improving teacher quality and instruction, thereby contributing to increased student achievement. The study will survey (online) a population of teacher participants in school-based PLCs and interview principals face to face about the context and their perceptions of the initiative, pre- and post-implementation. Data collection from teachers will focus on what the PLCs do, how they operate, and to what extent they produce the outcomes expected of them as framed by six conceptual attributes of PLCs and five specific tasks. Data collection from principals will focus on contextual information about school culture and conditions such as resources that support implementation. Teachers and principals will also provide their reflections on the challenges of implementing PLCs and their suggestions for improvement. The analysis will enable comparisons among PLCs within and across schools. Study findings are expected to inform both theory and practice related to implementation of professional learning communities.

Dated: January 10, 2014.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–00685 Filed 1–15–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and Request for OMB Review and Comment.

**SUMMARY:** The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Occupational Radiation Protection Program, OMB Control Number 1910–5105. This information collection request covers information necessary to permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation. The Estimated Number of Total Responses in the previously published request for comments, 34, is incorrect; the correct Estimated Number of Total Responses is 170.

**DATES:** Comments regarding this collection must be received on or before February 18, 2014.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650 or contacted by e-mail at *chad_s_whitman@omb.eop.gov*.

**ADDRESSES:** Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, *Chad_S_Whiteman@omb.eop.gov*.

And to: U.S. Department of Energy, 1000 Independence Avenue SW., Attn: Dr. Judith D. Foulke, HS–11, Washington, DC 20585, *judy.foulke@hq.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:** Request for additional information should be directed to Judith D. Foulke, telephone (301) 903–5865, by fax at (301) 903–7773 or by email at *judy.foulke@hq.doe.gov*.

Information about the collection instrument may be obtained at: *http://www.hss.doe.gov/pra.html*.

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No: 1910–5105; (2) *Information Collection Request Title:* Occupational Radiation Protection Program; (3) *Type of Review:* Renewal; (4) *Purpose:* The recordkeeping and reporting requirements that comprise this information collection will permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation; (5) *Annual Estimated Number of Respondents:* 34; (6) *Annual Estimated Number of Total Responses:* 170; (7) *Annual Estimated Number of Burden Hours:* 41,500; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $4,150,000; and (9) *Response Obligation:* Mandatory

**Statutory Authority:** Title 10, Code of Federal Regulations, Part 835, Subpart H.

Issued in Washington, DC, on January 10, 2014.

**Stephen A. Kirchhoff,**

*Director, Office of Resource Management, Office of Health, Safety and Security.*

[FR Doc. 2014–00756 Filed 1–15–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Advanced Scientific Computing Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of Open Teleconference Meeting.

**SUMMARY:** This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, January 21, 2014, 11:00 a.m. to 12:00 p.m. ET

**ADDRESSES:** The meeting is open to the public. To access the call:

1. Dial Toll-Free Number: 866–740–1260 (U.S. & Canada).
2. International participants dial: *http://www.readytalk.com/intl*.
3. Enter access code 8083012, followed by ''#''.

To ensure we have sufficient access lines for the public, we request that members of the public notify the DFO, Christine Chalk, that you intend to call-into the meeting via email at *christine.chalk@science.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:** Melea Baker, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone (301) 903–7486, (Email: *Melea.Baker@science.doe.gov*).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance on a continuing basis to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Agenda Topics:

- Subcommittee Exascale Report

This announcement is being published outside the normal publication guidelines due to the timing of the conference call meeting which had to be accelerated in order to meet the schedule of a related DOE effort.

*Public Participation:* The teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via email (*Melea.Baker@science.doe.gov*). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on January 10, 2014.

**Carol A. Matthews,**

*Committee Management Officer.*

[FR Doc. 2014–00758 Filed 1–15–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14–950–000.
*Applicants:* Great Bay Energy VI, L.L.C.
*Description:* Baseline new to be effective 1/6/2014.
*Filed Date:* 1/3/14.
*Accession Number:* 20140103–5093.
*Comments Due:* 5 p.m. ET 1/24/14.

*Docket Numbers:* ER14–951–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Request for Extended Waiver of certain specific provisions of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.
*Filed Date:* 1/3/14.
*Accession Number:* 20140103–5119.
*Comments Due:* 5 p.m. ET 1/10/14.

*Docket Numbers:* ER14–953–000.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Interconnection Contract with Southern to be effective 3/1/2014.
*Filed Date:* 1/6/14.
*Accession Number:* 20140106–5022.
*Comments Due:* 5 p.m. ET 1/27/14.

*Docket Numbers:* ER14–954–000.
*Applicants:* Duke Energy Carolinas, L.L.C.
*Description:* Interconnection Contract with Southern to be effective 3/1/2014.
*Filed Date:* 1/6/14.

*Accession Number:* 20140106–5023.
*Comments Due:* 5 p.m. ET 1/27/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 6, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–00692 Filed 1–15–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–964–000]**

### Pleasant Valley Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pleasant Valley Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 29, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 9, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–00693 Filed 1–15–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–965–000]**

### Border Winds Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Border Winds Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting That such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 29, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 9, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–00694 Filed 1–15–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent

arrangement under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the European Atomic Energy Community (EURATOM) and the United States of America and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway Concerning Peaceful Uses of Nuclear Energy.

**DATES:** This subsequent arrangement will take effect no sooner than January 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katie Strangis, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8623 or email: *Katie.Strangis@nnsa.doe.gov*.

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns a request for a three-year extension (April 2014 to April 2017) of the current programmatic approval for retransfer of U.S.-obligated irradiated fuel rods between Studsvik Nuclear AB, Sweden, and Institutt for Energiteknikk, IFE facilities Halden and Kjeller, Norway. The rods are being transferred for irradiation service, various tests and examinations, and will be returned to Studsvik Nuclear, Sweden for further test and final disposal. The total shipping amounts will be the same as allowed under the current approval—a maximum of 30,000 grams uranium, 400 grams U–235 and 400 grams plutonium in all shipments, combined, with a maximum of 100 grams of plutonium per shipment.

The current extension was approved in April 2011 and published in the **Federal Register** on March 29, 2011, (76 FR 17406) and is set to expire April 2014. If approved, the new extension, for three years, will extend to April 2017. Additional transactions are scheduled to occur between April 2014 and April 2017 and will be subject to the U.S.-EURATOM Agreement for Cooperation in the Peaceful Uses of Nuclear Energy.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: December 17, 2013.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2014–00754 Filed 1–15–14; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2008–0719, FRL 9904–77–OEI]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Cooling Water Intake Structure Phase II Existing Facilities (Renewal), Cooling Water Intake Structures at Phase III Facilities (Renewal), and NPDES Animal Sectors (Renewal)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that three Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew three existing approved collections, which are currently approved through January 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 57150) on September 17, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICRs are given below, including their estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before February 18, 2014.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: Water Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by email to: *oira_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5627; email address: *letnes.amelia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

### A. List of ICRs Submitted

(1) Cooling Water Intake Structure Phase II Existing Facilities (Renewal), EPA ICR No. 2060.06, OMB Control No. 2040–0257; expiration date 01/31/2014.

(2) Cooling Water Intake Structures at Phase III Facilities (Renewal), EPA ICR No. 2169.05, OMB Control No. 2040–0268, expiration date 01/31/2014.

(3) NPDES Animal Sectors (Renewal); EPA ICR No. 1989.09; OMB Control No. 2040–0250, expiration date 01/31/2014.

### B. Individual ICRS:

(1) Cooling Water Intake Structure Phase II Existing Facilities (Renewal)

*EPA ICR Number:* 2060.06

*OMB Control Number:* 2040–0257

*Abstract:* The section 316(b) Phase II Existing Facility rule requires the collection of information from existing point source facilities that generate and transmit electric power (as a primary activity) or generate electric power but sell it to another entity for transmission, use a cooling water intake structure (CWIS) that uses at least 25 percent of the water it withdraws from waters of the U.S. for cooling purposes, and have a design intake flow of 50 million gallons per day (MGD) or more. Section 316(b) of the Clean Water Act (CWA) requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to CWIS) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge

from the facility). The 316(b) Phase II rule establishes requirements applicable to the location, design, construction, and capacity of CWISs at Phase II existing facilities. These requirements establish the BTA for minimizing adverse environmental impact associated with the use of CWISs.

*Respondents/affected entities:* Entities potentially affected by this action include existing electric power generating facilities meeting the applicability criteria of the 316(b) Phase II Existing Facility rule at 40 CFR 125.91.

*Respondent's obligation to respond:* Mandatory.

*Estimated number of respondents:* 514 (472 facilities and 42 States).

*Frequency of response:* Every five years, bi-annually, monthly.

*Total estimated burden:* 1,010,021 (965,509 for facilities and 44,513 for States). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $59,478,339. This includes an estimated burden cost of $48,890,325 and an estimated cost of $10,588,074 for capital investment or maintenance and operational costs.

*Changes in the Estimates:* There is a decrease of 13,500 (1%) hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This marginal change is due to the variations of the compliance schedule from year to year.

(2) Cooling Water Intake Structures at Phase III Facilities (Renewal)

*EPA ICR Number:* 2169.05.

*OMB Control Number:* 2040–0268.

*Abstract:* The Section 316(b) regulations for Phase III facilities (71 FR 35,006; June 16, 2006) require the collection of information from new offshore oil and gas extraction facilities which use a cooling water intake structure(s) that uses at least 25 percent of the water it withdraws for cooling purposes, and has a design intake flow greater than two (2) million gallons per day (MGD). Section 316(b) of the CWA requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structure(s) at that facility reflect the best technology available for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on structural components at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The rule contains requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. These requirements seek to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structure(s).

*Respondents/affected entities:* Entities potentially affected by this action include new offshore oil and gas extraction facilities meeting the applicability criteria of the 316(b) Phase III Facilities at 40 CFR 125.131.

*Respondent's obligation to respond:* Mandatory.

*Estimated number of respondents:* 61 facilities.

*Frequency of response:* Every five years, annual, monthly.

*Total estimated burden:* 56,755 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $3,754,793. This includes an estimated labor burden cost of $2,795,603 and an estimated cost of $959,190 for capital investment or maintenance and operational costs.

*Changes in the Estimates:* There is an increase of 22,675 hours in burden from the ICR currently approved by OMB. The change in burden is mainly the result of the increase in the number of facilities performing recurring activities, as well as facilities shifting from the initial approval period to the permit implementation and renewal period of the Section 316(b) Phase III rule.

(3) NPDES Animal Sectors (Renewal)

*EPA ICR Number:* 1989.09.

*OMB Control Number:* 2040–0250.

*Abstract:* This ICR covers the information collection burden imposed under the NPDES and Effluent Limitations Guidelines (ELG) regulations for Concentrated Animal Feeding Operations (CAFO) and Concentrated Aquatic Animal Production (CAAP) facilities.

On July 30, 2012, EPA published its most recent revisions to the NPDES CAFO regulations (77 FR 44494). These revisions were necessary as a result of a court decision in 2011 by the United States Court of Appeals for the Fifth Circuit in litigation relating to the NPDES CAFO permitting program (*National Pork Producers Council* v. *EPA,* 635 F.3d 738, 756 (5th Cir. 2011)). Although the decision narrowed the scope of CAFOs that need to seek NPDES permit coverage, the Effluent Limitations Guidelines for CAFOs and other aspects of the permitting program remain unchanged. As a consequence, the recordkeeping and reporting requirements faced by those CAFOs that do seek NPDES permit coverage were not affected.

The Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production (CAAP) Point Source Category establish specific reporting requirements for a portion of CAAP facilities through NPDES permits. The rule covers facilities which are defined as CAAP facilities (see 40 CFR 122.24 and 40 CFR Part 122) and produce at least 100,000 pounds of fish per year in flow through, recirculating and net pen systems. The special reporting and record-keeping requirements under the rule are the subject of this ICR. CAAP facility owners or operators are also required to file reports with the permitting authority when drugs with special approvals are applied to the production units or a failure in the structural integrity occurs in the aquatic animal containment system.

*Respondents/affected entities:* Entities potentially affected by this action are concentrated animal feeding operations (CAFOs) as specified in section 502(14) of the CWA, 33 U.S.C. 1362(14) and defined in the NPDES regulations at 40 CFR 122.23 and a subset of facilities engaged in aquatic animal production defined in 40 CFR part 451.

*Respondent's obligation to respond:* Mandatory.

*Estimated number of respondents:* 20,961 (20,915 facilities and 46 States).

*Frequency of response:* varies from once to ongoing.

*Total estimated burden:* 3,136,799 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Estimated total annual costs:* $70,924,281. This includes an estimated cost of $8,607,000 for capital investment or maintenance and operational costs.

*Changes in the estimates:* This updated ICR estimates a total burden that is 136,879 hours less (4.2%) than the currently approved amount. This is due primarily to the court decision mentioned previously, which reduced the number of CAFOs that need to seek NPDES permit coverage.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2014–00726 Filed 1–15–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2013–0316; FRL—9905–47–OEI]**

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Onshore Natural Gas Processing Plants (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Onshore Natural Gas Processing Plants (40 CFR Part 60, Subparts KKK and LLL) (Renewal)'' (EPA ICR No. 1086.10, OMB Control No. 2060–0120), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through March 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before February 18, 2014.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0316, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

*Abstract:* The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 60, subpart A), and any changes, or additions, to the Provisions are specified at 40 CFR part 60, subparts KKK and LLL. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semi-annually at a minimum.

*Form Numbers:* None.

*Respondents/affected entities:* Owners or operators of onshore natural gas processing plants.

*Respondent's obligation to respond:* Mandatory (40 CFR part 60, subparts KKK and LLL).

*Estimated number of respondents:* 577 (total).

*Frequency of response:* Initially, semiannually and occasionally.

*Total estimated burden:* 121,646 hours (annually). ''Burden'' is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $11,967,480 (per year), includes $68,400 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease in burden from the OMB Inventory of Approved Burden. This change is attributed to a decrease in the number of affected onshore gas processing facilities subject to subparts KKK and LLL, which was due to the impact of a new NSPS rule, which is subpart OOOO. This ICR merges EPA ICR Numbers 1086.09 and 2438.02 in order to resolve the inconsistencies with the required monitoring, recordkeeping and reporting requirements under these rules, as well as to update the number of existing respondents, resulting from the issuing of the new subpart OOOO. New and modified sources after August 23, 2011, subject to subparts KKK and LLL will now report under subpart OOOO; therefore, this ICR only includes the burden for existing respondents that are subject to the subparts KKK and LLL.

It should be noted that the wage rates in this ICR have been updated resulting in an increase of the cost of labor.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2014–00724 Filed 1–15–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2013–0667; FRL—9905–41–OEI]**

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Annual Public Water System Compliance Report (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), ''Annual Public Water System Compliance Report (Renewal) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 57378) on September 18, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before February 18, 2014.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0667, to: (1) EPA online using *www.regulations.gov* (our

preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Joyce Chandler, Monitoring, Assistance and Media Programs Division, Office of Compliance, MC–2227A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7073; fax number: (202) 564–0050; email address: *chandler.joyce@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

*EPA ICR#:* 1812.05.

*OMB Control #:* 2020–0020.

*Abstract:* Section 1414 (c)(3)(A) of the Safe Drinking Water Act (SDWA) requires that each state (a term that includes states, commonwealths and territories) that has primary enforcement authority under the Safe Drinking Water Act shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. These Annual State Public Water System Compliance Reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. To minimize a state's burden in preparing its annual statutorily-required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates.

Fifty-five states (including Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Navajo Nation) currently have primary enforcement authority under the Safe Drinking Water Act. The Navajo Nation was approved for primacy on December 6, 2000. Currently the State of Wyoming and the District of Columbia neither have primary enforcement authority nor are they seeking primary authority, so the number of 55 states is unlikely to change over the next three years of this ICR.

*Form Numbers:* None.

*Respondents/affected entities:* State, local and/or tribal governments.

*Respondent's obligation to respond:* Mandatory under Section 1414 (c)(3)(A) of the Safe Drinking Water Act.

*Estimated number of respondents:* 55 (total).

*Frequency of response:* Annual.

*Total estimated burden:* 4,400 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $317,684.95 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2014–00725 Filed 1–15–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2004–0065; FR–9905–53–OAR]**

## Proposed Information Collection Request; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies; EPA ICR No. 1643.08, OMB Control No. 2060–0264

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Proposed Information Collection Request; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies'' (EPA ICR No. 1643.08, OMB Control No. 2060–0264) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before March 17, 2014.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0065, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Paula Hirtz, OAQPS/SPPD, E143–01, Environmental Protection Agency, RTP, NC 27711; telephone number: 919–541–2618; fax number: 919–541–0246; email address: *hirtz.paula@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* This information collection is an application from State, local, or tribal agencies (S/L/Ts) for delegation of regulations developed under section 112 of the Clean Air Act. The five options for delegation are straight delegation, rule adjustment, rule substitution, equivalency by permit, or state program approval. The information is needed and used to determine if the entity submitting an application has met the criteria established in 40 CFR part 63 subpart E. This information is necessary for the EPA Administrator to determine the acceptability of approving S/L/T's rules, requirements, or programs in lieu of the Federal section 112 rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are S/L/Ts participating in this voluntary program. These government establishments are classified as Air and Water Resource and Solid Waste Management Programs under Standard Industrial Classification (SIC) code 9511 and North American Industry Classification System (NAICS) code 92411. No industries under any SIC or NAICS codes will be included among respondents.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* 119 S/L/Ts for maximum achievable control technology standards and 95 S/L/Ts for area source standards per year.

*Frequency of response:* One time per delegation request.

*Total estimated burden:* 29,489 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* About $1,502,300. This includes an estimated labor burden cost of $1,500,000 and an estimated cost of $2,300 for operation and maintenance costs resulting from photocopying and postage expenses.

*Changes in Estimates:* Preliminary results indicate a decrease of 7,618 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to: (1) A decrease in the number of MACT standard promulgations compared to last period, (2) a decrease in the number of area source standard promulgations compared to last period and (3) a decrease in the number of S/L/Ts taking area source delegation compared to last period. We are still in the process of reviewing the key assumptions in the ICR that will affect the overall burden estimate. These include the number of delegation activities expected to occur during the upcoming collection period, the delegation options most likely to be used by the delegated S/L/Ts, and the burden associated with each of the options. Depending on the outcome of this review, there could be changes in the overall burden estimates.

Dated: January 9, 2014.

**Kevin Culligan,**

*Acting Director, Sector Policies and Program Division.*

[FR Doc. 2014–00748 Filed 1–15–14; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before March 17, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1148.

*Title:* Section 79.3, Video Description of Video Programming.

*Form Number:* Not Applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, Not for profit entities and Individual or households.

*Number of Respondents and Responses:* 50 respondents, 54 responses.

*Estimated Time per Response:* 1–5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 115 hours.

*Total Annual Costs:* $22,140.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 303 and 613.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* On March 3, 2011, the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 11–36, in the Communications and Video Accessibility Act (CVAA) Video Description proceeding, MB Docket No.

11–43. The NPRM proposed to reinstate the Commission's video description rules adopted in 2000. On April 22, 2011, the Office of Management and Budget (OMB) pre-approved the information collection requirements contained in the proposed rules. On August 25, 2011, the Commission released a Report and Order, FCC 11–126, in the CVAA Video Description proceeding, MB Docket No. 11–43. The Reported and Order adopted the proposed information collection requirements without change. The final rules were codified at 47 CFR 79.3. On September 8, 2011, OMB issued its final approval for the information collection requirements. As discussed below, the information collection requirements include (1) video programming provider petitions for exemption based on ''economic burden'' and (2) non-form consumer complaints alleging violations of the video description rules. On June 25, 2012, the Commission received OMB approval for the removal of a portion of the burden hours and costs that were approved under 3060–1148 and placed into collection 3060–0874 (relating to the FCC Form 2000). This modification was due to the filing of complaints alleging violations of the video description rules now being filed via FCC Form 2000C.

Video description is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue, makes video programming more accessible to individuals who are blind or visually impaired. In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description. The United States Court of Appeals for the District of Columbia Circuit vacated the rules due to insufficient authority soon after their initial adoption. As directed by the CVAA, the Commission's Report and Order reinstated the video description rules, with certain modifications, effective October 8, 2011. The reinstated rules require large-market broadcast affiliates of the top four national networks and multichannel video programming distributor (''MVPD'') systems with more than 50,000 subscribers to provide video description.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–00671 Filed 1–15–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Approved by the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection requirements under OMB Control Number 3060–0819, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Leslie F. Smith, Office of the Managing Director, at (202) 418–0217, *Leslie.Smith@fcc.gov* or *PRA@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0819.

*OMB Approval Date:* December 12, 2013.

*OMB Expiration Date:* December 31, 2016.

*Title:* Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training.

*Form No.:* FCC Forms 481, 497, 550, 555, and 560.

*Respondents:* Individuals or households and businesses or other for-profit.

*Number of Respondents and Responses:* 41,806,827 respondents; 41,838,920 responses.

*Estimated Time per Response:* 0.25 hours to 250 hours.

*Frequency of Response:* On Occasion, Quarterly, Biennially, Monthly, One Time, and Annual reporting requirements, Third Party Disclosure requirements and Recordkeeping requirements.

*Total Annual Burden:* 24,184,565 hours.

*Total Annual Cost:* N/A.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 201–205, 214, 254 and 403 of the Communications Act of 1934, as amended.

*Privacy Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* The rules adopted in the 2012 Lifeline Reform Order affect individuals or households, and thus, there are impacts under the Privacy Act. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The Commission created a system of records notice (SORN) to cover the collection, storage, maintenance and disposal (when appropriate) of any personally identifiable information that the Commission may collect as part of the information collection. We note that USAC must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism, unless otherwise directed by the Commission, must not use the data except for purposes of administering the universal service support program mechanism, must not disclose data in company-specific form unless directed to do so by the Commission. If the Commission requests information that respondents believe is confidential, respondents may request confidential treatment of such information under 47 U.S.C. 0.459 of the Commission's rules unless such information is already publicly available in other forms or the Commission has previously concluded that such information should be publicly available.

*Needs and Uses:* The information collected under OMB control number 3060–0819 is used by the FCC and USAC to administer the universal service Lifeline program. It is used to provide support to eligible subscribers, ensure subscribers' continued eligibility and to prevent waste, fraud, and abuse of universal service funds.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–00711 Filed 1–15–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as

required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before February 18, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov mailto:PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0311.

*Title:* 47 CFR 76.54, Significantly Viewed Signals; Method to be followed for Special Showings.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 500 respondents, 1,274 responses.

*Frequency of Response:* On occasion reporting and third party disclosure requirements.

*Estimated Time per Response:* 1–15 hours (average).

*Total Annual Burden:* 20,610 hours.

*Total Annual Costs:* $200,000.

*Nature of Response:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) and 340 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 76.54(b) states significant viewing in a cable television or satellite community for signals not shown as significantly viewed under 47 CFR 76.54(a) or (d) may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level.

47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections.

47 CFR 76.54(e) and (f), are used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

*OMB Control Number:* 3060–0016.

*Title:* Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station, FCC Form 346; 47 CFR 74.787(c) and 74.793(d); LPTV Out-of-Core Digital Displacement Application.

*Form Number:* FCC Form 346.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; not-for-profit institutions; and State, local or tribal government.

*Number of Respondents:* 3,500 respondents and 3,500 responses.

*Estimated Time per Response:* 2.5–7 hours.

*Frequency of Response:* On occasion reporting requirement; third party disclosure requirement.

*Total Annual Burden:* 33,250 hours.

*Total Annual Costs:* $19,418,000.

*Nature of Response:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* FCC Form 346 is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station.

47 CFR 74.793(d) require that certain digital low power and TV translator stations submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301–CA) for new or modified construction permits.

47 CFR 74.787(c) require that all low power station with facilities on out-of-core channels (channels 52–59) submit a digital displacement (FCC Form 346) application proposing an in-core channel (channels 2–51, excluding channel 37) not later than September 1, 2011.

*OMB Control Number:* 3060–1104.

*Title:* Section 73.682(d), DTV Transmission and Program System and Information Protocol (''PSIP'') Standards.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not for-profit institutions.

*Number of Respondents and Responses:* 1,812 respondents and 1,812 respondents.

*Estimated Hours per Response:* 0.50 hours.

*Frequency of Response:* Third party disclosure requirement; weekly reporting requirement.

*Total Annual Burden:* 47,112 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 309 and 337 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* Confidentiality is not required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Section 73.682(d) of the Commission's rules incorporates by reference the Advanced Television Systems Committee, Inc. (''ATSC'') Program System and Information Protocol (''PSIP'') standard ''A/65C.'' PSIP data is transmitted along with a TV broadcast station's digital signal and provides viewers (via their DTV receivers) with information about the station and what is being broadcast, such as program information. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers (or viewers) of digital television (''DTV'').

ATSC PSIP standard A/65C requires broadcasters to provide detailed programming information when transmitting their broadcast signal. This standard enhances consumers' viewing experience by providing detailed information about digital channels and programs, such as how to find a program's closed captions, multiple streams and V-chip information. This standard requires broadcasters to populate the Event Information Tables (''EITs'') (or program guide) with accurate information about each event (or program) and to update the EIT if more accurate information becomes available. The previous ATSC PSIP standard A/65–B did not require broadcasters to provide such detailed programming information but only general information.

*OMB Control Number:* 3060–0960.

*Title:* 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 1,428 respondents and 12,686 responses.

*Estimated Time per Response:* 0.5–1 hour.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 12,402 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 76.122, 76.123, 76.124 and 76.127 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

*OMB Control Number:* 3060–0653.

*Title:* Sections 64.703(b) and (c), Consumer Information-Posting by Aggregators.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 56,075 respondents; 5,339,038 responses.

*Estimated Time per Response:* .017 to 3 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is found at section 226 [47 U.S.C. 226] Telephone Operator Services codified at 47 CFR 64.703(b) Consumer Information.

*Total Annual Burden:* 174,401 hours.

*Total Annual Cost:* $1,688,168.

*Privacy Act Impact Assessment:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Nature and Extent of Confidentiality:* No impact(s).

*Needs and Uses:* The information collection requirements included under this OMB Control Number 3060–0653, requires aggregators (providers of telephones to the public or to transient users of their premises) under 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) of the Commission's rules, to post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) of the Commission's rules requires the posted consumer information to be added when an aggregator has changed the pre-subscribed operator service provider (OSP) no later than 30 days following such change. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

*OMB Control Number:* 3060–1094.

*Title:* Licensing, Operation, and Transition of the 2500–2690 MHz Band.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

*Number of Respondents:* 42 respondents, 282 responses.

*Estimated Time per Response:* .5–2 hours.

*Frequency of Response:* On occasion and one time reporting requirements, third-party disclosure requirement and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 316.

*Total Annual Burden:* 147 hours.

*Total Annual Cost:* $11,550.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality. Respondents or applicants may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The information relating to substantial service is used by the Commission staff to satisfy requirements for licensees to demonstrate substantial service. Without this information, the Commission would not be able to carry out its statutory responsibilities. The third party disclosure coordination requirements are necessary to ensure that licensees do not cause interference to each other and that licensees who

undertake to transition to the new band plan receive reimbursement for eligible costs.

*OMB Control No.:* 3060–0865.

*Title:* Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, Individuals or households, Not-for-profit institutions, and State, Local or Tribal Government.

*Number of Respondents and Responses:* 62,490 respondents; 168,908 responses.

*Estimated Time per Response:* .166 hours (10 minutes)—4 hours.

*Frequency of Response:* Recordkeeping and third-party disclosure requirements; On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(i) and 309(j).

*Total Annual Burden:* 88,927 hours.

*Annual Cost Burden:* None.

*Privacy Act Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* This information collection contains personally identifiable information (PII). The FCC has a system of records notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records,'' to cover the collection, maintenance, use(s), and destruction of this PII, which respondents may provide to the FCC as part of the information collection requirement(s). This SORN was published in the **Federal Register** on April 5, 2006 (71 FR 17234, 17269).

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) as an extension after this 60 day comment period to obtain the full three-year clearance from them.

The purpose of this information collection is to continually streamline and simplify processes for wireless applicants and licensees, who previously used a myriad of forms for various wireless services and types of requests, in order to provide the Commission information that has been collected in separate databases, each for a different group of services. Such processes have resulted in unreliable reporting, duplicate filings for the same licensees/applicants, and higher cost burdens to licensees/applicants. By streamlining the Universal Licensing System (ULS), the Commission eliminates the filing of duplicative applications for wireless carriers; increases the accuracy and reliability of licensing information; and enables all wireless applicants and licensees to file all licensing-related applications and other filings electronically, thus increasing the speed and efficiency of the application process. The ULS also benefits wireless applicants/licensees by reducing the cost of preparing applications, and speeds up the licensing process in that the Commission can introduce new entrants more quickly into this already competitive industry. Finally, ULS enhances the availability of licensing information to the public, which has access to all publicly available wireless licensing information on-line, including maps depicting a licensee's geographic service area.

*OMB Control Number:* 3060–0667.

*Title:* Section 76.630, Compatibility with Consumer Electronics Equipment; Section 76.1621, Equipment Compatibility Offer; Section 76.1622, Consumer Education of Equipment Compatibility.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 8,250 respondents; 66,501 responses.

*Estimated Time per Response:* .017 hours–3 hours.

*Frequency of Response:* Recordkeeping and third party disclosure requirements; On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) and Section 632 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 17,353 hours.

*Total Annual Cost:* $1,355.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* 47 CFR 76.630(a) states a cable system operator shall not scramble or otherwise encrypt signals carried on the basic service tier. This requirement is subject to certain exemptions explained below. Requests for waivers of this prohibition, which are allowed under 47 CFR 76.630(a)(2), must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

47 CFR 76.1621 states a cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year (i.e., in subscriber billings or pre-printed information on the bill).

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

**Information Collection Requirements Which Require OMB Approval**

In October 2012, the Commission loosened its prohibition on encryption of the basic service tier. This rule change allows all-digital cable operators to encrypt, subject to certain consumer protection measures. 77 FR 67290 (Nov. 9, 2012); 47 CFR 76.630(a)(1). Encryption of all-digital cable service will allow cable operators to activate and/or deactivate cable service remotely, thus relieving many consumers of the need to wait at home to receive a cable technician when they sign up for or cancel cable service, or expand service to an existing cable connection in their home.

In addition, encryption will reduce service theft by ensuring that only paying subscribers have decryption equipment. Encryption could reduce cable rates and reduce the theft that often degrades the quality of cable service received by paying subscribers. Encryption also will reduce the number of service calls necessary for manual installations and disconnections, which may have beneficial effects on vehicle traffic and the environment.

Because this rule change allows cable operators to encrypt the basic service tier without filing a request for waiver, we expect that the number of requests for waiver will decrease significantly.

**These Requirements Remain Unchanged Since Last Approved by OMB**

47 CFR 76.1622 states that Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: View a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as ''Picture-in-Picture,'' channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–00669 Filed 1–15–14; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 17, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–XXXX.

*Title:* Rates for Inmate Calling Services Data Collection.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for profit.

*Number of Respondents and Responses:* 25 respondents; 25 responses.

*Estimated Time per Response:* 70 hours.

*Obligation to Respond:* Required to obtain or maintain benefits.

*Frequency of Response:* One-time reporting requirement.

*Total Annual Burden:* 1,750 hours.

*Total Annual Cost:* $0.

*Privacy Impact Assessment:* No impacts.

*Nature and Extent of Confidentiality:* The Commission anticipates providing confidential treatment for proprietary information submitted by ICS providers. Parties that comply with the terms of a protective order for the proceeding will have an opportunity to comment on the data. The Commission is not requesting respondents to submit confidential information to the Commission. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR Section 0.459 of the FCC's rules.

*Needs and Uses:* Section 201 of the Communications Act of 1934, (''Act'') as amended, 47 U.S.C. 201, requires that inmate calling service (ICS) providers' rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including those that serve correctional institutions such as ICS providers) be fairly compensated. The Commission's Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM), *Rates for Interstate Inmate Calling Services,* WC Docket No. 12–375, FCC 13–113, required that all ICS providers comply with a one-time mandatory data collection. The Report and Order requires ICS providers to submit data on the costs of providing interstate, intrastate toll, and local ICS. Data required to be submitted include data on the costs of telecommunications service, interconnection fees, equipment investment, installation and maintenance, security, ancillary services, and other costs. Providers will also be required to provide certain related rate, demand, and forecast data. The data will be used to inform the Commission's evaluation of rate reform options in the FNPRM, to enable the Commission to transition from interim rate safe harbors and rate caps to permanent rate reform, and to enable the Commission to discharge its core responsibility of ensuring just, reasonable and fair rates as required by sections 201 and 276 by ensuring interstate ICS rates are cost-based.

*OMB Control Number:* 3060–XXXX.

*Title:* Inmate Calling Service Provider Annual Report and Certification.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for profit.

*Number of Respondents and Responses:* 25 respondents; 25 responses.

*Estimated Time per Response:* 101 hours.

*Obligation to Respond:* Required to obtain or maintain benefits.

*Frequency of Response:* Annual.

*Total Annual Burden:* 2,525 hours.

*Total Annual Cost:* $108,750.

*Privacy Impact Assessment:* No impacts.

*Nature and Extent of Confidentiality:* The Commission anticipates providing confidential treatment for proprietary information submitted by ICS providers. Parties that comply with the terms of a protective order for the proceeding will have an opportunity to comment on the data. The Commission is not requesting respondents to submit confidential information to the Commission. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR Section 0.459 of the FCC's rules.

*Needs and Uses:* Section 201 of the Communications Act of 1934, (''Act'') as amended, 47 U.S.C. 201, requires that inmate calling service (ICS) providers' rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including those that serve correctional institutions such as ICS providers) be fairly compensated. The Commission's Order in *Rates for Interstate Inmate Calling Services,* WC Docket No. 12–375, FCC 13–113, required that all ICS providers annually certify their compliance with the Order and be accompanied by data regarding their ICS rates and minutes of use by correctional facility they serve. The annual certification requirement will enable the Commission to monitor ICS providers' rates to ensure they comply with the provisions of the Order and therefore ensure they are just, reasonable and fair as required by Sections 201 and 276. It will also enable consumers and other affected parties to monitor ICS rates and file complaints in a timely fashion.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–00710 Filed 1–15–14; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 the renewal of existing information collections, as required by

the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on the renewal of information collections 3064–0092, 3064–0099, 3064–0118, & 3064–0149, described below.

**DATES:** Comments must be submitted on or before March 17, 2014.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-Mail: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Kuiper, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:**

**Proposal To Renew the Following Currently-Approved Collections of Information**

*1. Title:* Community Reinvestment Act.

*OMB Number:* 3064–0092.

*Form Number:* FDIC.

*Frequency of Response:* On occasion.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Estimated Reporting Burden*—The reporting requirements involve approximately 257 large banks:

257 respondents; 82,223 reporting burden hours

*Estimated Recordkeeping Burden*—The recordkeeping requirements involve approximately 257 large banks:

257 record keepers; 83,233 recordkeeping burden hours

*Estimated Disclosure Burden*—The public file and public notice disclosure requirements involve 4524 small banks and 257 large banks:

4781 respondents @ 10 hours = 47,810 total disclosure burden hours.

*Total CRA Burden*—The FDIC estimates the combined estimated total annual reporting, recordkeeping, and disclosure burden at 213,266 hours.

*General Description of Collection:* The Community Reinvestment Act regulation requires the FDIC to assess the record of banks and thrifts in helping meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.

*2. Title:* Application for Waiver of Prohibition on Acceptance of Brokered Deposits

*OMB Number:* 3064–0099.

*Form Number:* None.

*Frequency of Response:* On occasion.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Estimated Number of Applications:* 85.

*Estimated Time per Application:* 6 hours.

*Total Annual Burden:* 510 hours.

*General Description of Collection:* Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction.

3. *Title:* Management Official Interlocks.

*OMB Number:* 3064–0118.

*Form Number:* None.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Estimated Number of Respondents:* 10.

*Frequency of Response:* On occasion.

*Estimated Annual Burden Hours per Response:* 4 hours.

*Total estimated annual burden:* 40 hours.

*General Description of Collection:* The FDIC's Management Official Interlocks regulation, 12 CFR 348, which implements the Depository Institutions Management Interlocks Act (DIMIA), 12 U.S.C. 3201–3208, generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances. Consistent with DIMIA, the FDIC's Management Official Interlocks regulation has an application requirement requiring information specified in the FDIC's procedural regulation. The rule also contains a notification requirement.

4. *Title:* Affordable Marketing/Consumer Opt-Out Notices.

*OMB Number:* 3064–0149.

*Form Number:* None.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Estimated Burden on Institutions:*

978 × 18 hours = 17,604 hours.

*Estimated Burden on Consumers:*

| | |
|---|---|
| Number of large-bank consumers who opt out = 39 × 25,000 × 0.035 | = 34,125 |
| Number of small-bank consumers who opt out = 939 × 5,000 × 0.035 | = 164,325 |
| Total number of consumers who opt out = 34,125 + 164,325 | = 198,450 |

*Estimated time per consumer opt-out* = 5 minutes.

*Estimated burden on consumers who opt out* = 198,450 × 5/60 hours = 16,537.5 hours.

*Total Estimated Burden:* 17,604 hours + 16,537.5 hours = 34,141.5 hours.

*General Description of Collection:* The Section 214 of the FACT Act requires financial institutions to disclose to consumers the opportunity to opt out of marketing solicitations from affiliates. The disclosures and responsive consumer opt-out notices comprise the elements of this collection of information.

*Request for Comment*

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of January 2014.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2014–00676 Filed 1–15–14; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011733–031.

*Title:* Common Ocean Carrier Platform Agreement.

*Parties:* A.P. Moller-Maersk A/S; American President Lines, Ltd., APL Co., PTE Ltd.; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; China Shipping Container Lines Company Limited; Compania Chilena de Navegacion Interoceanica S.A.; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; COSCO Container Lines Co., Ltd.; Emirates Shipping Lines; Evergreen Line Joint Service Agreement; Gold Star Line, Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd; Intermarine LLC; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mitsui O.S.K. lines Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Tasman Orient Line C.V. and Zim Integrated Shipping as non-shareholder parties.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

*Synopsis:* The amendment adds Intermarine LLC and Compania Chilena de Navegacion Interoceanica S.A. as parties to the agreement.

*Agreement No.:* 012241.

*Title:* CSCL/UASC/PIL Vessel Sharing Agreement and Slot Exchange Agreement—Asia and US/Canada West Coast Services.

*Parties:* China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping); United Arab Shipping Company S.A.G.; and Pacific International Lines (Pte) Ltd.

*Filing Party:* Brett M. Esber, Esq.; Blank Rome LLP; 600 New Hampshire Avenue NW., Washington, DC 20037.

*Synopsis:* The agreement authorizes the parties to share and provide space to each other on each party's vessels in the trade between the West Coast of the U.S. and Canada, on the one hand, and ports in China and South Korea, on the other hand.

*Agreement No.:* 012242.

*Title:* Maersk Line/CMA CGM OC–1 PAD2 Space Charter Agreement.

*Parties:* A.P. Moller-Maersk A/S trading under the name of Maersk Line and CMA CGM S.A.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

*Synopsis:* The agreement authorizes Maersk Line to charter space to CMA CGM in the trades between ports on the U.S. Atlantic Coast and ports in Australia, New Zealand, Colombia and Panama.

By Order of the Federal Maritime Commission.

Dated: January 10, 2014.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2014–00665 Filed 1–15–14; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Announcement of Requirements and Registration for the Federal Maritime Commission Chairman's Earth Day Award

**SUBJECT:** As authorized by the America COMPETES Act Reauthorization Act of 2011, Public Law 111–358, the Federal Maritime Commission's Maritime Environmental Committee (MEC) announces the FMC Chairman's Earth Day Award. This award seeks to recognize members of the maritime transportation industry for innovations and successes in developing environmentally sustainable shipping practices. Specifically, this award will seek to highlight technologies, programs, or practices of the maritime transportation industry that, through efficiency or innovation, benefit our environment.

*Eligibility:*

The Chairman's Earth Day Award is open to participants that meet the following requirements:

(1) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States.

(2) In the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(3) Shall not be a Federal entity or Federal employee acting within the scope of their employment.

*Criteria:*

At the end of the submission period, eligible submissions will be evaluated by members of the MEC based on the following criteria:

(1) Programs or practices that provide an environmental benefit or reduction in environmental harm, including but not limited to efforts that encourage a reduction in emissions or pollutants.

(2) Programs or practices that are sustainable and also serve as models for others to follow or replicate.

(3) Efforts that increase the public's awareness of the maritime transportation industry's efforts to protect the environment.

**DATES:** Important Dates for this award are:

Submission Period Begins: January 13, 2014.

Submission Period Ends: March 10, 2014.

*Registration process:*

Submissions should include a title and a description of the program or practice in the form of a document (5 page maximum) or a slide presentation (10 slides maximum). A web address for the program or practice along with pictures and video are optional but helpful. Email submissions to *mhoang@fmc.gov* are preferred, but submissions can be mailed to the following address: Mary Hoang, Federal Maritime Commission, 800 North Capitol St. NW., Washington, DC 20573.

*Award:*

At the end of the submission period, all eligible entries will be reviewed by members of the MEC. This is a non-monetary award and no prize money or funding will be distributed to the award winner. This is an award of recognition and past winners have been presented with a commemorative plaque at Commission headquarters in Washington, DC.

*General conditions:*

The Chairman reserves the right to cancel, suspend, and/or modify the award process, or any part of it, for any reason, at the Chairman's sole discretion. No rights are created by this

announcement, the award process, or the determination of the award, which will be decided at the sole discretion of the Chairman, based upon the recommendation of the MEC.

*Additional information:*

The award winner may not claim FMC or MEC endorsement. This award does not constitute an endorsement of a specific product, program or practice by the FMC, MEC, or the U.S. Federal Government.

For more information about the FMC and the Chairman's Earth Day Award, please contact Mary Hoang at 202–521–5733 or visit: *http://www.fmc.gov/news/maritime_environmental_issues.aspx.*

**Rachel Dickon,**

*Assistant Secretary.*

[FR Doc. 2014–00703 Filed 1–15–14; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 2014.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *The Adirondack Trust Company Employee Stock Ownership Trust,* Saratoga Springs, New York, to acquire an additional 50 shares of 473 Broadway Holding Corporation, and 2,000 additional voting shares of The Adirondack Trust Company, both in Saratoga Springs, New York.

Board of Governors of the Federal Reserve System, January 13, 2014.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2014–00734 Filed 1–15–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1478]**

### Policy on Payment System Risk

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Policy statement; request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is proposing to revise part I of its *Federal Reserve Policy on Payment System Risk* (PSR policy), which sets forth the Board's views, and related principles and minimum standards, regarding the management of risk in payment, clearing, and settlement systems. These revisions are proposed in light of the *Principles for Financial Market Infrastructures* (PFMI), the international risk-management standards for financial market infrastructures (FMIs) published in 2012.[1] These revisions are also proposed in light of the enhanced supervisory framework for designated financial market utilities as set forth in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'' or ''Act''). In particular, certain revisions are intended to clarify that designated financial market utilities for which the Board is the Supervisory Agency under Title VIII of the Act are required to comply with Regulation HH and not the risk-management or transparency expectations set out in the policy.

The Board is proposing to (1) revise the Board's existing minimum risk-management standards in the PSR policy to reflect the PFMI, which now represents the relevant set of international standards; (2) include all central securities depositories, securities settlement systems, and central counterparties in the scope of part I of the PSR policy; (3) introduce trade repositories to the scope of part I of the PSR policy; (4) clarify the Board's risk-management expectations for six mutually exclusive categories of FMI; (5) replace the existing self-assessment framework with a broader disclosure expectation; and (6) recognize responsibility E from the PFMI, in addition to other relevant international guidance, as the basis for cooperation with other authorities in regulating, supervising, and overseeing FMIs. The Board also proposes several conforming and technical changes to the introduction, the discussion of risks in payment, clearing, and settlement systems, and part I of the PSR policy.

**DATES:** Comments are due on or before March 31, 2014.

**ADDRESSES:** You may submit comments, identified by Docket No. OP–1478, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Lucier, Deputy Associate Director (202) 872–7581, Emily A. Caron, Senior Financial Services Analyst (202) 452–5261, or Kathy C. Wang, Senior Financial Services Analyst (202) 872–4991, Division of Reserve Bank Operations and Payment Systems; Christopher W. Clubb, Special Counsel (202) 452–3904 or Kara L. Handzlik, Counsel (202) 452–3852,

[1] An FMI is a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.

Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In adopting the PSR policy, the Board's objectives have been to foster the safety and efficiency of payment, clearing, and settlement systems. Part I of the current policy sets forth the Board's views, and related principles and minimum standards, regarding the management of risks in payment, clearing, and settlement systems, including those operated by the Federal Reserve Banks (Reserve Banks).[2] In setting out its views, the Board seeks to encourage these systems and their primary regulators to take the standards in this policy into consideration in the design, operation, monitoring, and assessment of these systems. The Board is guided by part I when exercising its supervisory and regulatory authority over entities under its jurisdiction, providing accounts and services, participating in cooperative oversight and similar arrangements, and providing Federal Reserve intraday credit to eligible account holders. Part I is not intended to exert or create supervisory or regulatory authority over any particular class of institutions or arrangements where the Board does not have such authority.

Since the early 1980s, the Board has published and periodically revised a series of policies encouraging the reduction and management of risks in payment and securities settlement systems.[3] In 1992, the Board issued its first ''Policy Statement on Payments System Risk,'' which provided a comprehensive statement of its previously adopted policies regarding payment system risk reduction, including risk management in private large-dollar funds transfer networks, private delivery-against-payment securities settlement systems, offshore dollar clearing and netting systems, and private small-dollar clearing and settlement systems.[4] Over time, the Board has updated the PSR policy to reflect the evolution of payment, clearing, and settlement systems that participate in the financial system; incorporate relevant international risk-management standards developed by central banks and market regulators as the baseline for its expectations; and improve transparency in the systems that are subject to its authority.[5]

Specifically, in 2004, the Board incorporated two key sets of standards into the PSR policy: the Committee on Payment and Settlement Systems (CPSS) report on the *Core Principles for Systemically Important Payment Systems* (CPSIPS), which extended and replaced the Lamfalussy Minimum Standards, and the CPSS and Technical Committee of the International Organization of Securities Commissions (IOSCO) report on *Recommendations for Securities Settlement Systems* (RSSS), which provided risk-management standards for securities settlement systems.[6] The CPSS and IOSCO built upon the RSSS and developed the *Recommendations for Central Counterparties* (RCCP) in 2004, which provided specific standards for central counterparties; the Board incorporated these standards in its PSR policy in 2007.[7]

In the 2007 revisions, the Board established an expectation for certain payment, clearing, and settlement systems to disclose publicly self-assessments against the standards incorporated in the policy, as appropriate. The Board expected these self-assessments to contain sufficient information to allow users and other stakeholders to identify, understand, and evaluate the risks of using the system's services. In addition to disclosing this information, systems were asked to assign themselves a rating with respect to observance of the standards. Systems were expected to review and update their self-assessments at least once every two years.

*Title VIII of the Dodd-Frank Act.* Title VIII of the Dodd-Frank Act established an enhanced supervisory framework for payment, clearing, and settlement systems, defined as financial market utilities under the Act, that are designated by the Financial Stability Oversight Council (Council) as systemically important.[8] Among other things, Title VIII directs the Board to prescribe, by rule or order, risk-management standards for certain designated financial market utilities, including those for which the Board is the Supervisory Agency, taking into consideration relevant international standards and existing prudential requirements.[9] In July 2012, the Board adopted by regulation (Regulation HH) risk-management standards based on the CPSIPS, RSSS, and RCCP.[10]

*CPSS–IOSCO PFMI.* In April 2012, CPSS and IOSCO published the PFMI, which updated, harmonized, strengthened, and replaced the existing standards in the CPSIPS, RSSS, and RCCP.[11] The PFMI sets forth 24 risk-management and related principles for payment systems that are systemically

[2] Part II governs the provision of intraday credit in accounts at the Reserve Banks and sets out the general methods used by the Reserve Banks to control their intraday credit exposures.

[3] See 50 FR 21120, (May 22, 1985); 52 FR 29255 (Aug. 6, 1987); 54 FR 26104 and 26092 (June 21, 1989); and 54 FR 26092 (June 21, 1989).

[4] 57 FR 40455 (Sept. 3, 1992).

[5] In 1994, the Board incorporated the Lamfalussy Minimum Standards that were set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries,* published by the Bank for International Settlements in November 1990. 59 FR 67534 (Dec. 29, 1994). See the report at *http://www.bis.org/publ/cpss04.pdf.*

[6] 69 FR 69926 (Dec. 1, 2004). The CPSIPS and RSSS are available at *http://www.bis.org/publ/cpss43.htm* and *http://www.bis.org/publ/cpss46.htm,* respectively. The Federal Reserve participated in the development of the CPSIPS, and the Federal Reserve, the U.S. Securities and Exchange Commission (SEC), and the U.S. Commodity Futures Trading Commission (CFTC) participated in the development of the RSSS. The CPSIPS and RSSS were adopted as part of the Financial Stability Board's (FSB's) Key Standards for Sound Financial Systems, which are widely recognized and endorsed by U.S. authorities as integral to strengthening global financial stability. The FSB is an international forum that was established to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. The FSB includes the U.S. Department of the Treasury, the Board, and the SEC.

[7] 72 FR 2518 (Jan. 19, 2007). The RCCP is available at *http://www.bis.org/publ/cpss64.htm.* In addition to the Federal Reserve, the SEC and the CFTC participated in the development of the RCCP. The report was adopted as part of the FSB's Key Standards for Sound Financial Systems.

[8] The term ''financial market utility'' is defined in Title VIII as ''any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person'' (12 U.S.C. 5462(6)). Financial market utilities are a subset of FMIs. For example, trade repositories are excluded from the definition of a financial market utility.

[9] The term ''Supervisory Agency'' is defined in Title VIII as the ''Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws'' (12 U.S.C. 5462(8)). Currently, the Board is the Supervisory Agency for two financial market utilities that have been designated by the Council—The Clearing House Payments Company, L.L.C., on the basis of its role as operator of the Clearing House Interbank Payments System, and CLS Bank International; these designated financial market utilities are subject to the risk-management standards promulgated by the Board under section 805(a)(1)(A). These standards also apply to any designated financial market utility for which another Federal banking agency is the appropriate Title VIII Supervisory Agency. At this time, there are no designated financial market utilities in this category.

[10] 77 FR 45907 (Aug. 2, 2012).

[11] The PFMI is available at *http://www.bis.org/publ/cpss101a.pdf.* In the final rule for Regulation HH, the Board stated that it anticipated reviewing the PFMI, consulting with other appropriate agencies and the Council, and seeking public comment on the adoption of revised standards for designated financial market utilities based on the new international standards. See 77 FR 45907, 45908–09 (Aug. 2, 2012). Concurrent with this proposal, the Board is issuing proposed revisions to Regulation HH that take into consideration the PFMI.

important, central securities depositories, securities settlement systems, central counterparties, and trade repositories. The report addresses areas such as legal risk, governance, credit and liquidity risks, operational risk, general business risk, and other types of risk. The report also addresses the interdependencies between and among the individual risks, recognizing that attempts to mitigate one type of risk might give rise to another. In some cases, a principle will build upon others or multiple principles will reference a common theme. Therefore, the 24 principles are designed to be applied as a set, and not on a stand-alone basis, because of the significant interaction among the principles.

The 24 principles are organized such that each principle comprises (1) a headline standard, (2) a list of key considerations that further elaborate on the headline standard, and (3) accompanying explanatory notes that discuss the objective and rationale of the principle and provide additional guidance on how the principle may be implemented. Some headline standards and key considerations set out a specific minimum requirement to ensure that a minimum level of risk management is achieved across FMI types and across jurisdictions. The principles, however, do not typically prescribe a specific tool or arrangement to achieve their requirements in recognition that the means to satisfy a given requirement may vary by the type of entity or the market it serves.

The PFMI contains new and heightened requirements and more-extensive guidance for FMIs than did the previous set of international standards, such as providing more-extensive guidance on governance of an FMI and placing greater emphasis on transparency. It also requires that certain FMIs maintain a higher level of financial resources to address credit risk than in the past; it provides a separate set of requirements with respect to liquidity risk; and it contains higher requirements with respect to the type and frequency of testing to assess the sufficiency of financial resources to address both credit and liquidity risks. Additionally, the PFMI sets forth new requirements for FMIs to plan for recovery and orderly wind-down, to manage general business risk, to manage the risks associated with tiered participation, and for central counterparties to have rules and procedures that enable segregation and portability.

In addition to the 24 principles, the PFMI sets out five responsibilities for authorities responsible for effective regulation, supervision, and oversight of FMIs, including central banks. The five responsibilities call for (A) FMIs to be subject to appropriate and effective regulation, supervision, and oversight, (B) FMI authorities to have the powers and resources necessary to carry out effectively their responsibilities with respect to FMIs, (C) FMI authorities to clearly define and disclose their policies with respect to FMIs, (D) FMI authorities to adopt the PFMI and apply it consistently, and (E) FMI authorities to cooperate with each other, as appropriate, in promoting the safety and efficiency of FMIs.

Overall, the PFMI reflects more than a decade of experience with international standards for FMIs, important lessons from recent financial crises, and other relevant policy work by the international standard-setting bodies. The Federal Reserve, along with the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC), had a significant role in the development of this document. The report also reflects broad market input, including from U.S. FMIs and market participants.[12]

*CPSS–IOSCO Disclosure Framework for FMIs.* In December 2012, the CPSS and IOSCO followed up on the publication of the PFMI by publishing their report on the *Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology* (''disclosure framework'' and ''assessment methodology'').[13] The disclosure framework prescribes the form and content of the disclosures expected of FMIs in principle 23 of the PFMI. The assessment methodology provides guidance to assessors for evaluating observance of the 24 principles and five responsibilities set forth in the PFMI. The Federal Reserve, along with the SEC and the CFTC, had a significant role in the development of this document.

## II. Discussion of Proposed Policy Changes

The Board is proposing to revise part I of its PSR policy in light of the international risk-management standards in the PFMI. The Board is also revising part I in light of the enhanced supervisory framework for designated financial market utilities set forth in Title VIII of the Dodd-Frank Act. In particular, certain revisions are intended to clarify that designated financial market utilities that are required to comply with Regulation HH are not also subject to the risk-management or transparency expectations set out in the policy.

The Board requests comments on its proposal to (1) revise the Board's existing minimum risk-management standards in the PSR policy to reflect the PFMI, (2) include all central securities depositories, securities settlement systems, and central counterparties in the scope of part I of the PSR policy, (3) introduce trade repositories to the scope of part I of the PSR policy, (4) clarify the Board's risk-management expectations for six mutually exclusive categories of FMI, (5) replace the existing self-assessment framework with a broader disclosure expectation, and (6) recognize responsibility E from the PFMI, in addition to other relevant international guidance, as the basis for cooperation with other authorities in regulating, supervising, and overseeing FMIs. The Board also proposes several conforming and technical changes to the introduction, the discussion of risks in payment, clearing, settlement systems, and part I of the PSR policy.

The Board proposes that the revised policy become effective when the final version is published in the **Federal Register**. The Board recognizes, however, that several of the expectations in the revised policy are new or heightened and may require additional time to implement, such as up to six months after finalization of the policy.[14] These may include the revised expectations in section I.B.2 on transparency and the expectation to manage risks arising in tiered participation arrangements under principle 19 in the appendix. They may also include certain aspects of principle 3 on framework for the comprehensive management of risks, principle 4 on credit risk, principle 7 on liquidity risk, and principle 15 on general business risk in the appendix.

### *1. Revise the Board's Existing Minimum Risk-Management Standards in the PSR Policy To Reflect the PFMI*

The Board proposes to incorporate the PFMI in part I of the PSR policy by incorporating the headline standards from the 24 principles with no modification as the relevant risk-

[12] The CPSS and IOSCO published a consultative version of the PFMI in March 2011 and received 120 comment letters on that version. All designated financial market utilities, as well as many of their major participants, provided comment on the consultative version.

[13] The disclosure framework and assessment methodology are available at *http://www.bis.org/publ/cpss106.pdf.*

[14] The Board would monitor implementation with respect to these expectations through the supervisory process.

management standards for all central securities depositories, securities settlement systems, central counterparties, and trade repositories, as well as certain payment systems. This approach is consistent with the Board's past actions to incorporate appropriate international standards for key payment, clearing, and settlement systems into its policy statement. The new headline standards will replace the existing standards from the CPSIPS, RSSS, and RCCP previously set out in sections I.C.1 and I.C.2 of the PSR policy. For readability, the Board is proposing to move the list of headline standards into an appendix to the policy.

The Board believes these standards should be incorporated into part I of the PSR policy because the PFMI establishes an important framework for promoting sound risk management in FMIs, both domestically and internationally. The safety and efficiency of FMIs affect the safety and soundness of U.S. financial institutions and, in many cases, are vital to the financial stability of the United States. The Board has recognized and endorsed the PFMI as integral to strengthening the stability of the broader financial system. In addition, the Financial Stability Board (FSB) has replaced the CPSIPS, RSSS, and RCCP with the PFMI in its Key Standards for Sound Financial Systems.[15] The Basel Committee on Banking Supervision (BCBS) considers the application of the PFMI to be an important factor in determining capital charges for bank exposures to central counterparties related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions.[16] Central banks and market regulators around the world are now taking steps to incorporate the PFMI into the legal and supervisory frameworks applicable to FMIs.[17]

In a separate, related **Federal Register** notice, the Board proposes to revise concurrently Regulation HH in consideration of the PFMI. The language proposed for the risk-management standards in the PSR policy is different from the language proposed in the revisions to Regulation HH. In the PSR policy, the Board proposes to maintain its long-standing approach of incorporating the headlines of the international standards with no modification. In implementing the PSR policy, the Board anticipates that it will be guided by the key considerations and explanatory notes of the PFMI. As an enforceable federal regulation, however, the text of Regulation HH requires a greater degree of clarity, so more detail was included in the regulatory text, including concepts from the key considerations and explanatory text of the PFMI.

*2. Include all Central Securities Depositories, Securities Settlement Systems, and Central Counterparties in the Scope of Part I of the PSR Policy*

Consistent with the scope of the PFMI, the Board proposes to expand the scope of part I of the PSR policy to include all central securities depositories, securities settlement systems, and central counterparties, irrespective of the value or nature of transactions processed by the system. The scope of the current part I of the PSR policy includes only those central securities depositories, securities settlement systems, and central counterparties that expect to settle a daily aggregate gross value of U.S. dollar-denominated transactions exceeding $5 billion on any day during the next 12 months. The Board believes all of these types of FMIs should be within the scope of the policy because they perform activities that are critical to the functioning of the financial markets or support the transparency of the market they serve. As discussed further below, part I is not intended to exert supervisory or regulatory authority over any particular class of institutions or arrangements where the Board does not have such authority.

The Board also proposes to revise part I of the PSR policy to reflect the functional definitions of ''securities settlement system'' and ''central securities depository'' in the PFMI. The current PSR policy is based on the definitions for these terms provided in the RSSS, which defines a securities settlement system as ''the full set of institutional arrangements for confirmation, clearance, and settlement of securities trades and safekeeping of securities'' and a central securities depository as ''an institution for holding securities that enables securities transactions to be processed by means of book entries.'' For consistency with the PFMI, the Board proposes to revise the policy to define securities settlement system more narrowly as an entity that ''enables securities to be transferred and settled by book entry and allows transfers of securities free of or against payment'' and to define a central securities depository as an entity that ''provides securities accounts and central safekeeping services.''

*3. Introduce Trade Repositories Into the Scope of Part I of the PSR Policy*

Consistent with the scope of the PFMI, the Board proposes to expand the scope of part I of the PSR policy to include trade repositories. (The Board notes that it does not have any direct supervisory authority over a trade repository at this time.) Trade repositories are entities that maintain a centralized electronic record of transaction data and have emerged as an important type of FMI, especially in the over-the-counter derivatives market. This type of FMI improves market transparency by providing data to relevant authorities and the public in line with their respective information needs. Timely and reliable access to data stored in a trade repository can improve the ability of relevant authorities and the public to identify and evaluate potential risks to the broader financial system. Trade repositories should be expected to manage their risks in a manner consistent with the PFMI to help ensure that these public interest objectives are met.

*4. Clarify the Board's Risk-Management Expectations for Six Mutually Exclusive Categories of FMI*

The Board proposes revisions to the PSR policy that define six mutually exclusive categories of FMI and set forth separately the Board's risk-management expectations for each category. Five of the proposed categories are set out in section I.B.1 of the revised policy; these are (1) the Fedwire Funds Service and the Fedwire Securities Service (collectively, Fedwire Services); (2) designated financial market utilities for which the Board is the Supervisory Agency under Title VIII of the Dodd-Frank Act; (3) other FMIs that are subject to the Board's supervisory authority under the Federal Reserve Act; (4) all other central securities depositories, securities settlement systems, central counterparties, and trade repositories; and (5) other systemically important offshore and cross-border payment systems. An additional category for other payment systems within the scope of the policy is set out in section I.C of the revised policy. The Board believes the categories are necessary to avoid confusion about how the policy addresses each category of FMI in light

[15] For the FSB's Key Standards for Sound Financial Systems, see *http://www.financialstabilityboard.org/cos/key_standards.htm.*

[16] See BCBS, *Capital Requirements for Bank Exposures to Central Counterparties,* July 2012, (*http://www.bis.org/publ/bcbs227.pdf*) and BCBS, *Capital Treatment of Bank Exposures to Central Counterparties,* consultative document, June 2013 (*http://www.bis.org/publ/bcbs253.pdf*).

[17] Progress on implementation as of April 5, 2013, is reflected in CPSS–IOSCO, *Implementation Monitoring of PFMIs—Level 1 Assessment Report,* August 2013 (*http://www.bis.org/publ/cpss111.pdf*).

of the changes to the scope of the policy and the passage of the Dodd-Frank Act. The Board recognizes that other authorities may regulate FMIs within the scope of this policy, and the Board encourages these authorities to adopt policies consistent with the PFMI.

*Fedwire Services.* The Board proposes a category in the PSR policy for the Fedwire Services. The Board expects that the Fedwire Services meet or exceed the standards set forth in the proposed appendix to the policy. The Board anticipates that it will be guided by the key considerations and explanatory notes in the PFMI, including the guidance on central bank-operated systems, in supervising the Fedwire Services. This expectation is consistent with past practice; the Board has historically recognized the critical role that the Fedwire Services play in the financial system and has required them to meet or exceed the applicable international standards incorporated into the PSR policy.

Consistent with the previous international standards, the PFMI recognizes that flexibility in implementation is warranted for central bank-operated systems to meet the objectives of the standards because of central banks' roles as monetary authorities and liquidity providers. The Board believes that these principles may include principle 2 on governance, principle 3 on the framework for the comprehensive management of risks, principle 4 on credit risk, principle 5 on collateral, principle 7 on liquidity risk, principle 13 on participant-default rules and procedures, principle 15 on general business risk, and principle 18 on access and participation requirements.[18]

One example of a principle where the Board proposes to allow flexibility in application for the Fedwire Services is principle 15 on general business risk. A key consideration in principle 15 requires FMIs to maintain viable recovery or orderly wind-down plans that consider general business risk and to hold sufficient liquidity and capital reserves to implement the plans. The Fedwire Services do not face the risk that a business shock would cause the service to wind down in a disorderly manner and disrupt the stability of the financial system. The Federal Reserve, as the central bank, would support a recovery or orderly wind-down of the service, as appropriate to meet public policy objectives. Therefore, the Board proposes not to require the Fedwire Services to develop recovery or orderly wind-down plans.[19] In order to foster competition with private-sector FMIs, however, the Board proposes to require the Federal Reserve priced services to hold six months of the Fedwire Funds Service's current operating expenses as liquid financial assets and equity on the pro forma balance sheet.[20] [21] This balance sheet is used for imputing costs in the private-sector adjustment factor and, as a result, establishing Fedwire Funds Service fees.[22] If it is necessary to impute additional assets and equity, the incremental cost would be incorporated into the pricing of Fedwire Funds Service fees. The Board may reexamine the six-month requirement in light of the final rule for Regulation HH and issues of competitive equity between private-sector systems and the Fedwire Funds Service.[23]

*Designated financial market utilities for which the Board is the Supervisory Agency under Title VIII of the Dodd-Frank Act.* The Board proposes to include a category in the PSR policy for designated financial market utilities for which the Board is the Supervisory Agency under Title VIII of the Dodd-Frank Act. The proposed part I of the PSR policy states explicitly that these FMIs are expected to comply with the risk-management requirements in Regulation HH only. The discussion of this category in the policy is intended to clarify that designated financial market utilities subject to Regulation HH are not within the scope of the risk-management expectations set out in part I of the PSR policy.

*Other financial market infrastructures subject to the Board's supervisory authority under the Federal Reserve Act.* The Board proposes to include a category for other private-sector FMIs that are subject to the Board's authority. This category would include FMIs that are chartered as state member banks, trust companies, and Edge or agreement corporations, other than those that are designated financial market utilities subject to Regulation HH. The Board expects these FMIs to meet or exceed the standards proposed in the appendix.

*All other central securities depositories, securities settlement systems, central counterparties, and trade repositories.* The Board proposes to include a category for all other central securities depositories, securities settlement systems, central counterparties, and trade repositories, whether they are located within or outside of the United States, and encourages these FMIs to meet or exceed the standards proposed in the appendix. Consistent with the scope of the PFMI, the Board supports the application of the standards in the appendix to these FMIs, regardless of size, because they perform activities that are critical to market functioning or support the transparency of the market they serve. Where the Board does not have authority over a central securities depository, securities settlement system, central counterparty, or trade repository, the Board will be guided by this policy in its cooperative efforts with other FMI authorities.

*Other systemically important offshore and cross-border payment systems.* The Board proposes a category for systemically important offshore and cross-border payment systems that are not included in any of the categories above. These systems may be used by U.S. financial institutions, clear or settle U.S. dollars, or have an impact on financial stability, more broadly. The Board encourages these payment systems to meet or exceed the standards proposed in the appendix. The Board will be guided by this policy in its

[18] Relevant references from the explanatory notes of the PFMI include paragraphs 1.23 and 3.2.7 and footnotes 45, 134, and 144.

[19] The Board also proposes not to require the Fedwire Services to develop recovery or orderly wind-down plans as required under principle 3 on framework for the comprehensive management of risks.

[20] As required by the Monetary Control Act of 1980, Board policy has historically required and will continue to require that the Fedwire Services be operated and priced in a manner that fosters competition, improves the efficiency of the payment mechanism, and lowers costs of these services to society. The Board established a set of pricing principles that governs the schedule of fees for the Federal Reserve priced services, including the Fedwire Services, that is consistent with these objectives. (12 U.S.C. 248a(c)(3); *http://www.federalreserve.gov/paymentsystems/pfs_principles.htm*).

[21] Consistent with the PFMI, the calculation of these current operating expenses would exclude depreciation and amortization expenses.

[22] Federal Reserve priced services fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned if a private business provided the services. The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor. The Board's current method for calculating the private-sector adjustment factor involves developing an estimated Federal Reserve priced services pro forma balance sheet using actual priced services assets and liabilities. The remaining components on the balance sheet, such as equity, are imputed as if these services were provided by a publicly traded firm. The capital structure of imputed equity is derived from the market for publicly traded firms, subject to minimum equity constraints consistent with those required by the Federal Deposit Insurance Corporation for a well-capitalized institution.

[23] The Board does not plan to impose this requirement on the Fedwire Securities Service. There are no competitors to the Fedwire Securities Service that would face such a requirement. Therefore, imposing such a requirement when pricing securities services would artificially increase the cost of these services, inconsistent with the intent of the Monetary Control Act of 1980 that services be provided at the lowest cost to society (see *http://www.federalreserve.gov/paymentsystems/pfs_principles.htm*).

cooperative efforts with other payment system authorities.

*Other payment systems within the scope of the policy.* The Board proposes a category in the revised policy for other payment systems that exceed the existing $5 billion daily transaction threshold (or equivalent) but that are not captured in the categories outlined above and in proposed section I.B.1 on risk management. The Board encourages these payment systems to comply with the general policy expectations previously set forth in section I.B. of the policy (section I.C. in the proposed revised policy).

The current part I of the PSR policy follows an organizational approach that establishes general policy expectations for all payment, clearing, and settlement systems within the scope of the policy and then adds heightened expectations for systemically important systems. In light of the PFMI and Regulation HH, the Board is proposing to modify this approach to clarify its expectations. Under the proposed revisions, the general expectations would now be confined to ''other payment systems within the scope of the policy'' for purposes of simplicity and clarity. There would be no need to apply separately the general expectations to the other categories of FMIs. The general expectations themselves are consistent in substance with principles 1 through 3 of the PFMI and would remain unchanged.

*5. Replace the Existing Self-Assessment Framework With a Broader Disclosure Expectation*

The Board proposes to replace the existing self-assessment framework for systemically important systems, as previously set out in section I.C.3, with a broader expectation of public disclosure set out in proposed section I.B.2 on transparency. The Board would expect the FMIs addressed in section I.B.1 that are subject to its authority, except designated financial market utilities that are subject to Regulation HH, to complete the disclosure framework and to disclose their responses to the public.[24] The Board also encourages FMIs that are not subject to its authority to disclose their responses to the disclosure framework and will work with the appropriate authorities to promote such disclosures.

The Board believes that comprehensive public disclosures by FMIs will promote increased understanding among participants, authorities, and the broader public of the activities of an FMI, its risk profile, and its risk-management practices and will thus support sound decisionmaking by FMIs and their stakeholders. Comprehensive disclosures will also facilitate the implementation and ongoing monitoring of observance of the risk-management standards in the appendix. Consequently, comprehensive disclosures are a means to achieve greater stability in the financial system.

The Board believes that the disclosure framework is an appropriate template for these disclosures because it provides an international baseline that will promote consistent disclosures by FMIs around the world. The disclosure framework includes background information on the FMI's function and the market it serves, basic performance statistics for the FMI, and a description of the FMI's organization, legal and regulatory framework, system design, and operations as well as a narrative for each principle that summarizes the FMI's approach to observing the principle. The accompanying assessment methodology provides guiding questions that an FMI may use to guide the content and level of detail of its narrative. Unlike the existing self-assessment framework, however, the Board does not expect the FMI to assign itself a rating of observance for each standard.

Many of the expectations in the existing self-assessment framework with respect to frequency of updates, review and approval, and publication of the disclosure will remain the same. The Board will continue to expect an FMI to update the relevant parts of its disclosure following changes to the FMI or the environment in which it operates that would significantly change the accuracy of its public disclosure. At a minimum, an FMI would be expected to review and update as warranted its disclosure every two years. The Board will continue to expect an FMI's senior management and board of directors to review and approve the FMI's disclosure. Lastly, the Board continues to expect the FMI to make its disclosure readily available to the public, such as by posting it on the FMI's public Web site.

*6. Recognize Responsibility E From the PFMI, in Addition to Other Relevant International Guidance, as the Basis for Cooperation With Other Authorities*

The Board proposes to incorporate responsibility E from the PFMI in the PSR policy, in addition to existing international guidance, as the basis for its cooperation with other authorities in the regulation, supervision, and oversight of FMIs. The Board has a long-standing history of cooperation with other authorities. The Board believes that cooperative arrangements among authorities are an effective and practical means to promote effective risk management and transparency by FMIs. As stated in the proposed revisions, where the Board does not have statutory or exclusive authority over an FMI covered by the policy, the Board will be guided in its interactions with other domestic and foreign authorities by international principles on cooperative arrangements for the regulation, supervision, and oversight of FMIs, including responsibility E in the PFMI and part B of the CPSS *Central Bank Oversight of Payment and Settlement Systems* report.[25] Accordingly, the Board proposes to create a new section I.D in the PSR policy to highlight and expand the existing discussion in the current policy of cooperation among authorities in regulating, supervising, and overseeing FMIs.

## III. Request For Comment

The Board requests comment on the proposed revisions to its PSR policy. Where possible, commenters should provide both quantitative data and detailed analysis in their comments, particularly with respect to suggested alternatives to the proposed revisions. Commenters should also explain the rationale for their suggestions. In particular, the Board requests comment on whether the revisions are sufficiently clear and achieve the Board's intended objectives. The Board also requests comment on the following specific questions:

1. Should the Board incorporate only the headline standards from the PFMI in the PSR policy or should the Board also incorporate key considerations?

2. Has the Board clearly articulated the applicability of the risk-management expectations in the PSR policy to each category and type of FMI?

3. Are there other risk-management expectations that the Board should include in the PSR policy?

4. Should the Board provide specific standards for the Fedwire Services in an appendix to the PSR policy to clarify how the PFMI will be applied to these central bank-operated systems?

5. Is the proposed application of principle 15 in the appendix to the Fedwire Funds Service appropriate? The Board considered the alternative of

[24] The Board's proposed revised Regulation HH imposes an equivalent public disclosure requirement.

[25] See CPSS, *Central Bank Oversight of Payment and Settlement Systems,* Part B on ''Principles for international cooperative oversight,'' May 2005, available at *http://www.bis.org/publ/cpss68.htm.*

requiring the Fedwire Funds Service to impute holdings of liquid financial assets and equity that are specific to Fedwire Funds Service itself to meet the requirement, but believes that it would likely be difficult to implement in practice. For the case in which an FMI is part of a larger legal entity, are there any reasonable methodologies for determining which of the liquid financial assets and equity held at the legal entity level belong to a particular service line?

6. Are the proposed triggers for reviewing and updating a disclosure appropriate? If not, what other triggers would ensure published disclosures remain accurate?

7. As discussed above, the Board recognizes that certain expectations in the policy may require additional time to implement. Besides those expectations listed above, are there other expectations that may require additional time to implement? Is six months sufficient to implement changes to meet these expectations?

## IV. Administrative Law Matters

### *1. Competitive Impact Analysis*

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payment system participants.[26] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The proposed policy revisions provide that Reserve Bank systems will be treated similarly to private-sector systems and thus will have no material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing payment and securities settlement services. As stated above, there are several risk-management standards in the appendix for which flexibility in implementation will be necessary for the Fedwire Services given the Federal Reserve's legal framework and structure and its roles as monetary authority and liquidity provider. The Board recognizes, however, the critical role that the Fedwire Services play in the financial system and will require them to meet or exceed the applicable international standards incorporated into the PSR policy. Where appropriate to foster competition with private-sector systems, the Board proposes to incorporate the cost of certain requirements into the pricing of Fedwire Services. Furthermore, if the Board determines that its approach to applying the standards in the appendix to the Fedwire Services creates a competitive imbalance between the Fedwire Services and any private-sector competitors that provide similar services, the Board may reexamine the requirements for the Fedwire Services. Therefore, the Board believes the proposed policy will have no material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing payment and securities settlement services.

### *2. Paperwork Reduction Act Analysis*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed policy under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents, and these respondents do not represent all or a substantial majority of payment, clearing, and settlement systems. Therefore, no collections of information pursuant to the Paperwork Reduction Act are contained in the proposed policy.

## V. Federal Reserve Policy On Payment System Risk

### Introduction

### Risks In Payment, Clearing, Settlement, and Recording Systems

### PART I. RISK MANAGEMENT FOR FINANCIAL MARKET INFRASTRUCTURES

A. Scope
B. Policy expectations for certain financial market infrastructures
1. Risk management
   a. Fedwire Services
   b. Designated financial market utilities for which the Board is the Supervisory Agency under Title VIII of the Dodd-Frank Act
   c. Other financial market infrastructures that are subject to the Board's supervisory authority under the Federal Reserve Act
   d. All other central securities depositories, securities settlement systems, central counterparties, and trade repositories
   e. Other systemically important offshore and cross-border payment systems
2. Transparency
C. General policy expectations for other payment systems within the scope of the policy
1. Establishment of a risk-management framework
   a. Identify risks clearly and set sound risk-management objectives
   b. Establish sound governance arrangements to oversee the risk-management framework
   c. Establish clear and appropriate rules and procedures to carry out the risk-management objectives
   d. Employ the resources necessary to achieve the system's risk-management objectives and implement effectively its rules and procedures
2. Other considerations for a risk-management framework
D. Cooperation with other authorities in regulating, supervising, and overseeing financial market infrastructures

### PART II. FEDERAL RESERVE INTRADAY CREDIT POLICIES

### APPENDIX—CPSS–IOSCO Principles for Financial Market Infrastructures

#### Introduction

Financial market infrastructures (FMIs) are critical components of the nation's financial system. FMIs are multilateral systems among participating financial institutions, including the system operator, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.[27] [28] FMIs include payment

[26] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System,'' as revised in March 1990 (55 FR 11648 (Mar. 29, 1990)).

[27] This definition is based on the definition provided in the Committee on Payment and Settlement Systems (CPSS) and Technical Committee of the International Organization of Securities Commissions (IOSCO) report on *Principles for Financial Market Infrastructures* (PFMI), April 2012, available at *http://www.bis.org/publ/cpss101.htm.* Further, an FMI generally embodies one or more of the following characteristics: (1) A multilateral arrangement with three or more participants; (2) a set of rules and procedures, common to all participants, that govern the clearing (comparison and/or netting), settlement, or recording of payments, securities, derivatives, or other financial transactions; (3) a common technical infrastructure for conducting the clearing, settlement, or recording process; and (4) a risk-management or capital structure that takes into

systems, central securities depositories, securities settlement systems, central counterparties, and trade repositories. The safety and efficiency of these systems may affect the safety and soundness of U.S. financial institutions and, in many cases, are vital to the financial stability of the United States. Given the importance of FMIs, the Board of Governors of the Federal Reserve System (Board) has developed this policy to set out the Board's views, and related standards, regarding the management of risks that FMIs present to the financial system and to the Federal Reserve Banks (Reserve Banks). In adopting this policy, the Board's objective is to foster the safety and efficiency of payment, clearing, settlement, and recording systems and to promote financial stability, more broadly.

Part I of this policy sets out the Board's views, and related standards, regarding the management of risks in FMIs, including those operated by the Reserve Banks. In setting out its views, the Board seeks to encourage FMIs and their primary regulators to take the standards in this policy into consideration in the design, operation, monitoring, and assessment of these systems. The Board will be guided by this part, in conjunction with relevant laws, regulations, and other Federal Reserve policies, when exercising its supervisory and regulatory authority over FMIs or their participants, providing accounts and services to FMIs, participating in cooperative oversight and similar arrangements for FMIs with other authorities, or providing intraday credit to eligible Federal Reserve account holders. Designated financial market utilities subject to Regulation HH are not subject to the risk-management or transparency expectations set out in this policy.[29]

Part II of this policy governs the provision of intraday credit or ''daylight overdrafts'' in accounts at the Reserve Banks and sets out the general methods used by the Reserve Banks to control their intraday credit exposures.[30] Under this part, the Board recognizes that the Federal Reserve has an important role in providing intraday balances and credit to foster the smooth operation of the payment system. The Reserve Banks provide intraday balances by way of supplying temporary, intraday credit to healthy depository institutions, predominantly through collateralized intraday overdrafts.[31] The Board believes that such a strategy enhances intraday liquidity while controlling risk to the Reserve Banks. Over time, the Board aims to reduce the reliance of the banking industry on uncollateralized intraday credit by providing incentives to collateralize daylight overdrafts. The Board also aims to limit the burden of the policy on healthy depository institutions that use small amounts of intraday credit.

Through this policy, the Board expects financial system participants, including private-sector FMIs and the Reserve Banks, to reduce and control settlement and other systemic risks arising in FMIs, consistent with the smooth operation of the financial system. This policy is also designed to govern the provision of intraday balances and credit while controlling the Reserve Banks' risk by (1) making financial system participants and FMIs aware of the types of basic risk that may arise in the payment, clearing, settlement, or recording process; (2) setting explicit risk-management expectations; (3) promoting appropriate transparency by FMIs to help inform participants and the public; and (4) establishing the policy conditions governing the provision of Federal Reserve intraday credit to eligible account holders. The Board's adoption of this policy in no way diminishes the primary responsibilities of financial system participants to address the risks that may arise through their operation of or participation in FMIs.

## RISKS IN PAYMENT, CLEARING, SETTLEMENT, AND RECORDING SYSTEMS

The basic risks in payment, clearing, settlement, and recording systems may include credit risk, liquidity risk, operational risk, and legal risk. In the context of this policy, these risks are defined as follows:[32]

- Credit risk: the risk that a counterparty, whether a participant or other entity, will be unable to meet fully its financial obligations when due, or at any time in the future.
- Liquidity risk: the risk that a counterparty, whether a participant or other entity, will be unable to meet fully its financial obligations when due, although it may be able to do so in the future. An FMI, through its design or operation, may bear or generate liquidity risk in one or more currencies in its payment or settlement process. In this context, liquidity risk may arise between or among the system operator and the participants in the FMI, the system operator and other entities (such as settlement banks, nostro agents, or liquidity providers), the participants in the FMI and other entities, or two or more participants in the FMI.
- Operational risk: the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by the FMI.[33]
- Legal risk: the risk of loss from the unexpected or uncertain application of a law or regulation.

These risks also arise between financial institutions as they clear, settle, and record payments and other financial transactions and must be managed by institutions, both individually and collectively.[34]

Further, FMIs may increase, shift, concentrate, or otherwise transform risks in unanticipated ways. FMIs, for example, may pose systemic risk to the financial system because the inability of one or more of its participants to perform as expected may cause other participants to be unable to meet their obligations when due. The failure of one or more of an FMI's participants to settle their payments or other financial transactions as expected, in turn, could create credit or liquidity problems for participants and their customers, the system operator, other financial institutions, and the financial market the FMI serves. Thus, such a failure might lead ultimately to a disruption in the financial markets more broadly and undermine public confidence in the nation's financial system.

Mitigating the risks that arise in FMIs is especially important because of the interdependencies such systems inherently create among financial institutions. In many cases, interdependencies are a normal part of an FMI's structure or operations. Although they can facilitate the safety and efficiency of

account the multilateral dependencies inherent in the system.

[28] The term ''financial institution,'' as used in this policy, refers to a broad array of organizations that engage in financial activity, including depository institutions, securities dealers, and futures commission merchants.

[29] The term ''financial market utility'' is defined in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) as ''any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.'' Trade repositories, which the Dodd-Frank Act defines as providing ''facilities for comparison of data respecting the terms of settlement of securities or futures transactions,'' are not included in the term ''financial market utility'' (12 U.S.C. 5462). Financial market utilities are, therefore, a subset of the broader set of entities defined as FMIs. Under Title VIII, financial market utilities are designated as systemically important by the Financial Stability Oversight Council. The Board's Regulation HH is discussed in section I.B.1.b below.

[30] To assist depository institutions in implementing part II of this policy, the Board has prepared two documents, the *Overview of the Federal Reserve's Payment System Risk Policy* (Overview) and the *Guide to the Federal Reserve's Payment System Risk Policy* (Guide), which are available at *http://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm.* The Overview summarizes the Board's policy on the provision of intraday credit, including net debit caps and daylight overdraft fees, and is intended for use by institutions that incur only small amounts of daylight overdrafts. The Guide explains in detail how these policies apply to different institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the policy.

[31] The term ''depository institution,'' as used in this policy, refers not only to institutions defined as depository institutions in 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banking organizations, Edge and agreement corporations, trust companies, and bankers' banks, unless the context indicates a different reading.

[32] The definitions of credit risk, liquidity risk, operational risk, and legal risk are consistent with those presented in the PFMI.

[33] Operational risk also includes physical threats, such as natural disasters and terrorist attacks, and information security threats, such as cyber attacks. Further, deficiencies in information systems or internal processes include errors or delays in processing, system outages, insufficient capacity, fraud, data loss, and leakage.

[34] Several existing regulatory and bank supervision guidelines and policies also are directed at financial institutions' management of the risks posed by interbank payment and settlement activity. For example, the Board's Regulation F (12 CFR Part 206) directs insured depository institutions to establish policies and procedures to avoid excessive exposures to any other depository institution, including exposures that may be generated through the clearing and settlement of payments.

the FMI's payment, clearing, settlement, or recording processes, interdependencies can also present an important source or transmission channel of systemic risk. Disruptions can originate from any of the interdependent entities, including the system operator, the participants in the FMI, and other systems, and can spread quickly and widely across markets if the risks that arise among these parties are not adequately measured, monitored, and managed. For example, interdependencies often create complex and time-sensitive transaction and payment flows that, in combination with an FMI's design, can lead to significant demands for intraday credit or liquidity, on either a regular or an extraordinary basis.

The Board recognizes that the Reserve Banks, as settlement institutions, have an important role in providing intraday balances and credit to foster the smooth operation and timely completion of money settlement processes among financial institutions and between financial institutions and FMIs. To the extent that the Reserve Banks are the source of intraday credit, they may face a risk of loss if such intraday credit is not repaid as planned. In addition, measures taken by Reserve Banks to limit their intraday credit exposures may shift some or all of the associated risks to financial institutions and FMIs.

In addition, mitigating the risks that arise in certain FMIs is critical to the areas of monetary policy and banking supervision. The effective implementation of monetary policy, for example, depends on both the orderly settlement of open market operations and the efficient movement of funds throughout the financial system via the financial markets and the FMIs that support those markets. Likewise, supervisory objectives regarding the safety and soundness of financial institutions must take into account the risks FMIs, both in the United States and abroad, pose to financial institutions that participate directly or indirectly in, or provide settlement, custody, or credit services to, such systems.

## PART I. RISK MANAGEMENT FOR FINANCIAL MARKET INFRASTRUCTURES

This part sets out the Board's views, and related standards, regarding the management of risks in FMIs, including those operated by the Reserve Banks. The Board will be guided by this part, in conjunction with relevant laws, regulations, and other Federal Reserve policies, when exercising its authority in (1) supervising the Reserve Banks under the Federal Reserve Act; (2) supervising state member banks, Edge and agreement corporations, and bank holding companies, including the exercise of authority under the Bank Service Company Act, where applicable; (3) carrying out certain of its responsibilities under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); (4) setting or reviewing the terms and conditions for the use of Reserve Bank accounts and services; and (5) developing and applying policies for the provision of intraday liquidity to eligible Reserve Bank account holders.[35] This part will also guide the Board, as appropriate, in its interactions and cooperative efforts with other domestic and foreign authorities that have responsibilities for regulating, supervising, or overseeing FMIs within the scope of this part. The Board's adoption of this policy is not intended to exert or create supervisory or regulatory authority over any particular class of institutions or arrangements where the Board does not have such authority.

### *A. Scope*

FMIs within the scope of part I include public- and private-sector payment systems that expect to settle a daily aggregate gross value of U.S. dollar-denominated transactions exceeding $5 billion on any day during the next 12 months.[36] [37] FMIs within the scope of this part also include all central securities depositories, securities settlement systems, central counterparties, and trade repositories irrespective of the value or nature of the transactions processed by the system.[38] These FMIs may be organized, located, or operated within the United States (domestic systems), outside the United States (offshore systems), or both (cross-border systems) and may involve currencies other than the U.S. dollar (non-U.S. dollar systems and multi-currency systems).[39] The scope of the policy also includes any payment system based or operated in the United States that engages in the settlement of non-U.S. dollar transactions if that payment system would be otherwise subject to the policy.[40]

Part I does not apply to market infrastructures such as trading exchanges, trade-execution facilities, or multilateral trade-compression systems. This part is also not intended to apply to bilateral payment, clearing, or settlement relationships, where an FMI is not involved, between financial institutions and their customers, such as traditional correspondent banking and government securities clearing services. The Board believes that these market infrastructures and relationships do not constitute FMIs for purposes of this policy and that risk-management issues associated with these market infrastructures and relationships are more appropriately addressed through other relevant supervisory and regulatory processes.

### *B. Policy Expectations for Certain Financial Market Infrastructures*

This section sets out the Board's views, and related standards, with respect to risk-management and transparency for the Reserve Banks' Fedwire Funds Service and Fedwire Securities Service (collectively, Fedwire Services), designated financial market utilities that are subject to Regulation HH, other FMIs that are subject to the Board's supervisory authority under the Federal Reserve Act, all other central securities depositories, securities settlement systems, central counterparties, and trade repositories, as well as other systemically important offshore and cross-border payment systems. Because these FMIs have the potential to be a source of risk or channel for the transmission of financial shocks across the financial system, or are critical to market transparency in the case of trade repositories, the Board believes these FMIs should have comprehensive risk management as well as a high degree of transparency.

#### 1. Risk Management

Authorities, including central banks, have promoted sound risk-management practices by developing internationally accepted minimum standards that promote the safety and efficiency of FMIs. Specifically, the Committee on Payment and Settlement Systems (CPSS) and Technical Committee of the International Organization of Securities Commissions (IOSCO) report on *Principles for Financial Market Infrastructures* (PFMI) establishes minimum standards for payment systems that are systemically important, central securities depositories, securities settlement systems, central counterparties, and trade repositories in addressing areas such as legal risk, governance, credit and liquidity risks, general business risk, operational risk, and other types of risk.[41] The PFMI reflects broad market input and has been widely recognized, supported, and endorsed by U.S. authorities, including the Federal Reserve, U.S. Securities and Exchange Commission (SEC), and U.S. Commodity Futures Trading Commission (CFTC). These standards are also part of the Financial Stability Board's (FSB's) Key Standards for Sound Financial Systems.[42]

[35] 12 U.S.C. 248(j), 12 U.S.C. 5461 *et seq.*

[36] A ''payment system'' is a set of instruments, procedures, and rules for the transfer of funds between or among participants. Payment systems include, but are not limited to, large-value funds transfer systems, automated clearinghouse systems, check clearinghouses, and credit and debit card settlement systems. The scope of this policy also includes payment-versus-payment settlement systems for foreign exchange transactions.

[37] In determining whether it is included in the scope of this policy, a payment system should look at its projected ''next'' twelve-month period. ''Aggregate gross value of U.S. dollar-denominated transactions'' refers to the total dollar value of individual U.S. dollar transactions settled in the payment system, which also represents the sum of total U.S. dollar debits (or credits) to all participants before or in absence of any netting of transactions.

[38] A ''central securities depository'' is an entity that provides securities accounts and central safekeeping services. A ''securities settlement system'' is an entity that enables securities to be transferred and settled by book entry and allows transfers of securities free of or against payment. A ''central counterparty'' is an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer. A ''trade repository'' is an entity that maintains a centralized electronic record of transaction data. These definitions are based on those in the PFMI.

[39] Non-U.S. dollar systems may be of interest to the Board if they are used by U.S. financial institutions or may have the ability to affect financial stability, more broadly.

[40] The daily gross value threshold will be calculated on a U.S. dollar equivalent basis.

[41] In addition to these risk-management standards, the PFMI sets out responsibilities for authorities for FMIs, including central banks, in order to provide for effective regulation, supervision, and oversight of FMIs.

[42] The FSB's Key Standards for Sound Financial Systems are available at *http://www.financialstabilityboard.org/cos/key_standards.htm.* The FSB is an international forum that was established to develop and promote the

The Board believes that the implementation of the PFMI by the FMIs within the scope of this section will help promote their safety and efficiency in the financial system and foster greater financial stability in the domestic and global economy. Accordingly, the Board has incorporated into the PSR policy principles 1 through 24 from the PFMI, as set forth in the appendix. In addition, the Board's Regulation HH contains risk-management standards that are based on the PFMI for certain designated financial market utilities.[43] In applying part I of this policy, the Board will be guided by the key considerations and explanatory notes from the PFMI.[44]

a. Fedwire Services

The Board recognizes the critical role the Reserve Banks' Fedwire Services play in the financial system and requires them to meet or exceed the standards set forth in the appendix to this policy, consistent with the guidance on central bank-operated systems provided in the PFMI and with the requirements in the Monetary Control Act.[45] [46]

b. Designated Financial Market Utilities for Which the Board Is the Supervisory Agency Under Title VIII of the Dodd-Frank Act

The Board's Regulation HH imposes risk-management standards applicable to a designated financial market utility for which the Board is the Supervisory Agency.[47] [48] The risk-management standards in Regulation HH are based on the PFMI. As required under Title VIII of the Dodd-Frank Act, the risk-management standards seek to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Designated financial market utilities for which the Board is the Supervisory Agency are required to comply with the risk-management standards in Regulation HH and are not subject to the standards in the appendix.

c. Other Financial Market Infrastructures That Are Subject to the Board's Supervisory Authority Under the Federal Reserve Act

The Board expects all other FMIs that are subject to its supervisory authority under the Federal Reserve Act, including FMIs that are members of the Federal Reserve System, to meet or exceed the risk-management standards in the appendix.

d. All Other Central Securities Depositories, Securities Settlement Systems, Central Counterparties, and Trade Repositories

The Board encourages all other central securities depositories, securities settlement systems, central counterparties, and trade repositories, whether located within or outside the United States, to meet or exceed the risk-management standards in the appendix to this policy. Where the Board does not have authority over a central securities depository, securities settlement system, central counterparty, or trade repository, the Board will be guided by this policy in its cooperative efforts with other FMI authorities.

e. Other Systemically Important Offshore and Cross-Border Payment Systems

The Board encourages systemically important offshore and cross-border payment systems that are not included in any of the categories above to meet or exceed the risk-management standards in the appendix to this policy.[49] The Board will be guided by this policy in its cooperative efforts with other payment system authorities.

2. Transparency

Transparency helps ensure that relevant information is provided to an FMI's participants, authorities, and the public to inform sound decisionmaking, improve risk management, enable market discipline, and foster confidence in markets more broadly. In particular, public disclosures play a critical role in allowing current and prospective participants, as well as other stakeholders, to understand an FMI's operations and the risks associated with using its services and to manage more effectively their risks with respect to the FMI. The Board believes that FMIs are well-positioned to provide the information necessary to support greater market transparency and to maintain financial stability.

The Board expects an FMI that is subject to its supervisory authority but not subject to Regulation HH, to disclose to its participants information about the risks and costs that they incur by participating in the FMI, consistent with the requirements in principle 23 in the appendix.[50] At a minimum, the FMI should disclose to its participants overviews of the FMI's system design and operations, rules and key procedures, key highlights of business continuity arrangements, fees and other material costs, aggregate transaction volumes and values, levels of financial resources that can be used to cover participant defaults, and other information that would facilitate its participants' understanding of the FMI and its operations and their evaluation of the risks associated with using that FMI.

In addition, the Board expects such an FMI to complete the disclosure framework set forth in the CPSS–IOSCO *Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology* (''disclosure framework'' and ''assessment methodology'').[51] The disclosure framework establishes the international baseline set of information that all FMIs are expected to disclose publicly and review regularly.[52] An FMI is encouraged to use the guiding questions in the accompanying assessment methodology to guide the content and level of detail in their disclosures. The Board expects each FMI to make its disclosure readily available to the public, such as by posting it on the FMI's public Web site to achieve maximum transparency.

To ensure each FMI's accountability for the accuracy and completeness of its disclosure, the Board expects the FMI's senior management and board of directors to review and approve each disclosure upon completion. Further, in order for an FMI's disclosure to reflect its current rules, procedures, and operations, the Board expects the FMI to update the relevant parts of its disclosure following changes to the FMI or the environment in which it operates, which would significantly change the accuracy of the statements in its disclosure. At a minimum, the FMI is expected to review and update as warranted its disclosure every two years.

As part of its ongoing oversight of FMIs, the Board will review public disclosures by FMIs subject to its authority to ensure that the Board's policy objectives and

implementation of effective regulatory, supervisory and other financial sector policies. The FSB includes the U.S. Department of the Treasury, the Board, and the SEC.

[43] Regulation HH (12 C.F.R. Part 234) is available at *http://www.federalreserve.gov/bankinforeg/reglisting.htm#HH.*

[44] The Board will also look to the CPSS–IOSCO *Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology*, which is available at *http://www.bis.org/publ/cpss106.htm*, and other related documents.

[45] Certain standards may require flexibility in the way they are applied to central bank-operated systems because of central banks' unique role in the financial markets and their public responsibilities. These principles include principle 2 on governance, principle 3 on the framework for the comprehensive management of risks, principle 4 on credit risk, principle 5 on collateral, principle 7 on liquidity risk, principle 13 on participant-default rules and procedures, and principle 15 on general business risk, and principle 18 on access and participation requirements. For instance, the Reserve Banks should refer to part II of this policy for managing their credit risk arising from the provision of intraday credit to users of the Fedwire Services.

[46] The Monetary Control Act requires that fees be set for Reserve Bank services according to a set of pricing principles established by the Board. In preparing the pricing principles and fee schedules, the Board takes into account the objectives of fostering competition, improving the efficiency of the payment mechanism, and lowering costs of these services to society at large. At the same time, the Board is cognizant of, and concerned with, the continuing Federal Reserve responsibility and necessity for maintaining the integrity and reliability of the payment mechanism and providing an adequate level of service nationwide. (12 U.S.C. 248a(c)(3); *http://www.federalreserve.gov/paymentsystems/pfs_principles.htm*).

[47] The term ''Supervisory Agency'' is defined in Title VIII as the ''Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws'' (12 U.S.C. 5462(8)). Under Title VIII, the Board must prescribe risk-management standards for designated financial market utilities for which the Board or another Federal banking agency is the appropriate Supervisory Agency (12 U.S.C. 5464(a)).

[48] The Regulation HH risk-management standards also apply to any designated financial market utility for which another Federal banking agency is the appropriate Title VIII Supervisory Agency.

[49] These systems may be used by U.S. financial institutions, clear or settle U.S. dollars, or have the ability to affect financial stability, more broadly.

[50] The Board's Regulation HH imposes an equivalent public disclosure requirement.

[51] See CPSS–IOSCO, *Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology,* December 2012, available at *http://www.bis.org/publ/cpss106.htm.*

[52] Although the Board expects disclosures to be robust, it does not necessarily expect FMIs to disclose to the public sensitive information that could expose system vulnerabilities or otherwise put the FMI at risk (for example, specific business continuity plans).

expectations are being met.[53] Where necessary, the Board will provide feedback to the FMIs regarding the content of these disclosures and their effectiveness in achieving the policy objectives discussed above.[54] The Board acknowledges that FMIs vary in terms of the scope of instruments they settle and markets they serve. It also recognizes that FMIs may operate under different legal and regulatory constraints, charters, and corporate structures. The Board will consider these factors when reviewing the disclosures and in evaluating how an FMI addresses a particular standard. Where the Board does not have statutory or exclusive authority over an FMI, it will be guided by this policy in cooperative efforts with other domestic or foreign authorities to promote comprehensive disclosures by FMIs as a means to achieve greater safety and efficiency in the financial system.

*C. General Policy Expectations for Other Payment Systems Within the Scope of the Policy*

The Board encourages payment systems within the scope of this policy, but that are not included in any of the categories in section B above, to implement a general risk-management framework appropriate for the risks the payment system poses to the system operator, system participants, and other relevant parties as well as the financial system more broadly.

1. Establishment of a Risk-Management Framework

A risk-management framework is the set of objectives, policies, arrangements, procedures, and resources that a system employs to limit and manage risk. Although there are a number of ways to structure a sound risk-management framework, all frameworks should

a. identify risks clearly and set sound risk-management objectives;

b. establish sound governance arrangements to oversee the risk-management framework;

c. establish clear and appropriate rules and procedures to carry out the risk-management objectives; and

d. employ the resources necessary to achieve the system's risk-management objectives and implement effectively its rules and procedures.

a. Identify Risks Clearly and Set Sound Risk-Management Objectives

The first element of a sound risk-management framework is the clear identification of all risks that have the potential to arise in or result from the system's settlement process and the development of clear and transparent objectives regarding the system's tolerance for and management of such risks. System operators should identify the forms of risk present in their system's settlement process as well as the parties posing and bearing each risk. In particular, system operators should identify the risks posed to and borne by them, the system participants, and other key parties such as a system's settlement banks, custody banks, and third-party service providers. System operators should also analyze whether risks might be imposed on other external parties and the financial system more broadly.

In addition, system operators should analyze how risk is transformed or concentrated by the settlement process. System operators should also consider the possibility that attempts to limit one type of risk could lead to an increase in another type of risk. Moreover, system operators should be aware of risks that might be unique to certain instruments, participants, or market practices. Where payment systems have inter-relationships with or dependencies on other FMIs, system operators should also analyze whether and to what extent any cross-system risks exist and who bears them.

Using their clear identification of risks, system operators should establish the risk tolerance of the system, including the levels of risk exposure that are acceptable to the system operator, system participants, and other relevant parties. System operators should then set risk-management objectives that clearly allocate acceptable risks among the relevant parties and set out strategies to manage this risk. Risk-management objectives should be consistent with the objectives of this policy, the system's business purposes, and the type of payment instruments and markets for which the system clears and settles. Risk-management objectives should also be communicated to and understood by both the system operator's staff and system participants.

System operators should reevaluate their risks in conjunction with any major changes in the settlement process or operations, the transactions settled, a system's rules or procedures, or the relevant legal and market environments. System operators should review the risk-management objectives regularly to ensure that they are appropriate for the risks posed by the system, continue to be aligned with the system's purposes, remain consistent with this policy, and are being effectively adhered to by the system operator and participants.

b. Establish Sound Governance Arrangements To Oversee the Risk-Management Framework

Systems should have sound governance arrangements to implement and oversee their risk-management frameworks. The responsibility for sound governance rests with a system operator's board of directors or similar body and with the system operator's senior management. Governance structures and processes should be transparent; enable the establishment of clear risk-management objectives; set and enforce clear lines of responsibility and accountability for achieving these objectives; ensure that there is appropriate oversight of the risk-management process; and enable the effective use of information reported by the system operator's management, internal auditors, and external auditors to monitor the performance of the risk-management process.[55] Individuals responsible for governance should be qualified for their positions, understand their responsibilities, and understand their system's risk-management framework. Governance arrangements should also ensure that risk-management information is shared in forms, and at times, that allow individuals responsible for governance to fulfill their duties effectively.

c. Establish Clear and Appropriate Rules and Procedures to Carry Out the Risk-Management Objectives

Systems should have rules and procedures that are appropriate and sufficient to carry out the system's risk-management objectives and that are consistent with its legal framework. Such rules and procedures should specify the respective responsibilities of the system operator, system participants, and other relevant parties. Rules and procedures should establish the key features of a system's settlement and risk-management design and specify clear and transparent crisis management procedures and settlement failure procedures, if applicable.[56]

d. Employ the Resources Necessary To Achieve the System's Risk-Management Objectives and Implement Effectively Its Rules and Procedures

System operators should ensure that the appropriate resources and processes are in place to allow the system to achieve its risk-management objectives and effectively implement its rules and procedures. In particular, the system operator's staff should have the appropriate skills, information, and tools to apply the system's rules and procedures and achieve the system's risk-management objectives. System operators should also ensure that their facilities and contingency arrangements, including any information system resources, are sufficient to meet their risk-management objectives.

2. Other Considerations for a Risk-Management Framework

Payment systems differ widely in form, function, scale, and scope of activities, and these characteristics result in differing combinations and levels of risks. Thus, the exact features of a system's risk-management framework should be tailored to the risks of that system. The specific features of a risk-management framework may entail tradeoffs between efficiency and risk reduction, and payment systems will need to consider these tradeoffs when designing appropriate rules

[53] Any review of a disclosure by the Board should not be viewed as an approval or guarantee of the accuracy of an FMI's disclosure. Without the express approval of the Board, an FMI may not state publically that its disclosure has been reviewed, endorsed, approved, or otherwise not objected to by the Board.

[54] If the Board materially disagrees with the content of an FMI's disclosure, it will communicate its concerns to the FMI's senior management and possibly to its board of directors, as appropriate. The Board may also discuss its concerns with other relevant authorities, as appropriate.

[55] The risk-management and internal audit functions should also be independent of those responsible for day-to-day functions.

[56] Examples of key features that might be specified in a system's rules and procedures are controls to limit participant-based risks, such as membership criteria based on participants' financial and operational health; limits on credit exposures; and the procedures and resources to liquidate collateral. Other examples of key features might be business continuity requirements and loss-allocation procedures.

and procedures. In considering such tradeoffs, however, it is critically important that system operators take into account the costs and risks that may be imposed on all relevant parties, including parties with no direct role in the system. Furthermore, in light of rapidly evolving technologies and risk-management practices, the Board encourages all system operators to consider making risk-management improvements when cost-effective.

To determine whether a system's current or proposed risk-management framework is consistent with this policy, the Board will seek to understand how a system achieves the four elements of a sound risk-management framework set out above. In this context, the Board may seek to obtain information from system operators regarding their risk-management framework, risk-management objectives, rules and procedures, significant legal analyses, general risk analyses, analyses of the credit and liquidity effects of settlement disruptions, business continuity plans, crisis management procedures, and other relevant documentation.[57] The Board also may seek to obtain data or statistics on system activity on an ad hoc or ongoing basis. All information provided to the Federal Reserve for the purposes of this policy will be handled in accordance with all applicable Federal Reserve policies on information security, confidentiality, and conflicts of interest.

*D. Cooperation With Other Authorities in Regulating, Supervising, and Overseeing Financial Market Infrastructures*

When the Board does not have statutory or exclusive authority over an FMI covered by this policy, this section will guide the Board, as appropriate, in its interactions with other domestic and foreign authorities to promote effective risk management in and transparency by FMIs. For example, the Federal Reserve may have an interest in the safety and efficiency of FMIs outside the United States that are subject to regulation, supervision, or oversight by another authority but that provide services to financial institutions supervised by the Board or conduct activity that involves the U.S. dollar.[58] In its interactions with other domestic and foreign authorities, the Board will encourage these authorities to adopt and to apply the internationally accepted principles set forth in the appendix when evaluating the risks posed by and to FMIs and individual system participants that these authorities regulate, supervise, or oversee.

In working with other authorities, the Board will seek to establish arrangements for effective and practical cooperation that promote sound risk-management outcomes. The Board believes that cooperative arrangements among relevant authorities can be an effective mechanism for, among other things, (1) sharing relevant information concerning the policies, procedures, and operations of an FMI; (2) sharing supervisory views regarding an FMI; (3) discussing and promoting the application of robust risk-management standards; and (4) serving as a forum for effective communication, coordination, and consultation during normal circumstances, as well as periods of market stress.

When establishing such cooperative arrangements, the Board will be guided, as appropriate, by international principles on cooperative arrangements for the regulation, supervision, and oversight of FMIs. In particular, responsibility E in the PFMI addresses domestic and international cooperation among central banks, market regulators, and other relevant authorities and provides guidance to these entities for supporting each other in fulfilling their respective mandates with respect to FMIs. The CPSS report on *Central Bank Oversight of Payment and Settlement Systems* also provides important guidance on international cooperation among central banks.[59] The Board believes this international guidance provides important frameworks for cooperating and coordinating with other authorities to address risks in domestic, cross-border, multi-currency, and, where appropriate, offshore FMIs.

## PART II. FEDERAL RESERVE INTRADAY CREDIT POLICIES

[No change to existing part II of the policy.]

## APPENDIX—CPSS–IOSCO Principles for Financial Market Infrastructures

**Principle 1: Legal Basis**

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

**Principle 2: Governance**

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

**Principle 3: Framework for the Comprehensive Management of Risks**

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

**Principle 4: Credit Risk**

An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a central counterparty that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the central counterparty in extreme but plausible market conditions. All other central counterparties should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the central counterparty in extreme but plausible market conditions.

**Principle 5: Collateral**

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

**Principle 6: Margin**

A central counterparty should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

**Principle 7: Liquidity Risk**

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.

**Principle 8: Settlement Finality**

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

**Principle 9: Money Settlements**

An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.

[57] To facilitate analysis of settlement disruptions, systems may need to develop the capability to simulate credit and liquidity effects on participants and on the system resulting from one or more participant defaults, or other possible sources of settlement disruption. Such simulations may need to include, if appropriate, the effects of changes in market prices, volatilities, or other factors.

[58] An FMI may be subject to supervision or oversight by the Board and other authorities, as a result of its legal framework, operating structure (for example, multi-currency or cross-border systems), or participant base. In such cases, the Board will be sensitive to the potential for duplicative or conflicting requirements, oversight gaps, or unnecessary costs and burdens imposed on the FMI.

[59] See *Central Bank Oversight of Payment and Settlement Systems* (Oversight Report), part B on ''Principles for international cooperative oversight,'' May 2005, available at *http://www.bis.org/publ/cpss68.htm.*

**Principle 10: Physical Deliveries**

An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.

**Principle 11: Central Securities Depositories**

A central securities depository should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A central securities depository should maintain securities in an immobilised or dematerialised form for their transfer by book entry.

**Principle 12: Exchange-of-Value Settlement Systems**

If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

**Principle 13: Participant-Default Rules and Procedures**

An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

**Principle 14: Segregation and Portability**

A central counterparty should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the central counterparty with respect to those positions.

**Principle 15: General Business Risk**

An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.

**Principle 16: Custody and Investment Risks**

An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.

**Principle 17: Operational Risk**

An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

**Principle 18: Access and Participation Requirements**

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

**Principle 19: Tiered Participation Arrangements**

An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.

**Principle 20: FMI Links**

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

**Principle 21: Efficiency and Effectiveness**

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

**Principle 22: Communication Procedures and Standards**

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

**Principle 23: Disclosure of Rules, Key Procedures, and Market Data**

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

**Principle 24: Disclosure of Market Data by Trade Repositories**

A trade repository should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

By order of the Board of Governors of the Federal Reserve System, January 10, 2014.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2014–00681 Filed 1–15–14; 8:45 am]

BILLING CODE P

## GENERAL SERVICES ADMINISTRATION

**[Notice-PBS–2013–04; Docket 2013–0002; Sequence 42]**

## Notice Pursuant to Executive Order 12600 of Posting Certain GSA Real Property Lease Documents With Private Sector Landlords on GSA's Public Online Portal

**AGENCY:** Public Buildings Service, Office of Leasing, General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** This notice provides submitters notice pursuant to Executive Order 12600 that the GSA, Public Buildings Service, Office of Leasing is complying with the Office of Management and Budget's (OMB) Open Government Directive issued December 8, 2009, as M–10–06, to implement the principles of transparency and openness in government by posting certain GSA real property lease documents with private sector landlords on GSA's public online portal.

**DATES:** Comments must be received on or before February 18, 2014.

**ADDRESSES:** Submit comments identified by ''Notice–PBS–2013–04'', by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice–PBS–2013–04''. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''Notice–PBS–2013–04'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405. Notice–PBS–2013–04.

*Instructions:* Please submit comments only and cite ''Notice-PBS–2013–04'', in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. John D. Thomas at 202–501–2454.

**SUPPLEMENTARY INFORMATION:** [OMB's Open Government Directive issued December 8, 2009, as M–10–06, instructs federal agencies, including GSA, to take specific actions to implement the principles of transparency, participation, and collaboration. More specifically, the directive asks agencies to expand access to information by making it available online in open formats. To comply with this initiative, certain GSA real property lease documents with private sector landlords will be posted on GSA's public online portal, with specific data elements being redacted to protect privacy, personal, and proprietary information as outlined under the Freedom of Information Act (FOIA) and the Privacy Act. As such, this notice describes typical data elements contained in these lease documents and their exemption status under the FOIA statute.]

GSA, the nation's largest public real estate organization, provides workspace

for more than 1.2 million federal workers through its Public Buildings Service. Approximately half of the employees are housed in buildings owned by the federal government and half are located in over 7,200 separate leased properties (in over 8,700 leases), including buildings, land, antenna sites, etc., across the country. In order to comply with OMB's Open Government Directive issued December 8, 2009, as M–10–06, of transparency and openness in government, by posting certain GSA real property lease documents with private sector landlords on GSA's public online portal, GSA has identified several data elements that are exempt from disclosure pursuant to FOIA under, 5 U.S.C. 552(b).

The following table contains a description of these data fields and their exempt status under FOIA:

FOIA Review of Data Elements in GSA Lease Documents

| Data field | Exempt status | Public comments |
|---|---|---|
| (1) Lease Number | Not exempt under the FOIA. | |
| (2) Lease Award Date | Not exempt under the FOIA. | |
| (3) Leased Building Address (Including City State And Zip Code). | Not exempt under the FOIA. | |
| (4) Lease Effective Date | Not exempt under the FOIA. | |
| (5) Lease Expiration Date | Not exempt under the FOIA. | |
| (6) Length of Renewal Option Term(s) | Not exempt under the FOIA. | |
| (7) Renewal Option Rental Rate | Exempt—5 U.S.C. 522(b)(4). | |
| (8) Information on Lease termination rights | Not exempt under the FOIA. | |
| (9) Itemized Operating Cost Rate (Including Components Of Operating Costs, Such As Fuel Costs, Utilities, Janitorial Costs, etc.). | Exempt—5 U.S.C. 522(b)(4). | |
| (10) Lease Agreement Rentable Square Feet (RSF) | Not exempt under the FOIA. | |
| (11) Lease Agreement ANSI/BOMA Office Area Square Feet (ABOA SF). | Not exempt under the FOIA. | |
| (12) Lease Structured Parking Spaces | Not exempt under the FOIA. | |
| (13) Lease Surface Parking Spaces | Not exempt under the FOIA. | |
| (14) Percentage Of Occupancy | Not exempt under the FOIA. | |
| (15) Annual Rent (Including Rent Structure For Term Of Lease). | Not exempt under the FOIA. | |
| (16) Lessor Name | Not exempt under the FOIA. | |
| (17) Lessor Address if Lessor is an individual (including City, State, and Postal Code). | Exempt—5 U.S.C. 552(b)(6). | |
| (18) Lessor Phone if Lessor is an individual | Exempt—5 U.S.C. 552(b)(6). | |
| (19) Lessor Fax if Lessor is an individual | Exempt—5 U.S.C. 552(b)(6). | |
| (20) Lessor Email if Lessor is an individual | Exempt—5 U.S.C. 552(b)(6). | |
| (21) Name of Person Signing Lease | Not exempt under the FOIA. | |
| (22) Name of Person Witnessing Lease Signature | Not exempt under the FOIA. | |
| (23) Payee Name | Exempt—5 U.S.C. 552(b)(4). | |
| (24) Payee Address (including City, State, and Postal Code) | Exempt—5 U.S.C. 552(b)(4). | |
| (25) Payee Phone | Exempt—5 U.S.C. 552(b)(4). | |
| (26) Payee Fax | Exempt—5 U.S.C. 552(b)(4). | |
| (27) Payee Email | Exempt—5 U.S.C. 552(b)(4). | |
| (28) Itemized Unit Price Schedule (Including Construction Costs For Tenant Buildout Items Such As Drywall Partitioning, Electrical Outlets, Doors, Carpeting, Locks, Cabinets, etc.). | Exempt—5 U.S.C. 522(b)(4). | |
| (29) HVAC Overtime Rate | Not exempt under the FOIA. | |
| (30) Corporate Resolution | Exempt—5 U.S.C. 552(b)(4). | |
| (31) Partnership Agreement | Exempt—5 U.S.C. 552(b)(4). | |
| (32) Adjustment For Vacant Premises Rate | Not exempt under the FOIA. | |
| (33) Legal Description Of Building | Not exempt under the FOIA. | |
| (34) Normal Business Hours Of Building | Not exempt under the FOIA. | |
| (35) Agency Name or Agency initials | Exempt—5 U.S.C. 552(b)(7). | |
| (36) Floor Plan and drawings | Exempt—5 U.S.C. 552(b)(5) and (7). | |
| (37) Identification Of Building Floors Occupied | Not exempt under the FOIA. | |
| (38) Lessor Tax Payer Identification Number if Lessor is business entity or individual. | Exempt—5 U.S.C. 552(b)(4) or (6). | |
| (39) Social Security Number | Exempt—5 U.S.C. 552(b)(6). | |
| (40) DUNS Number (9 digit DUNS Number) | Not exempt under the FOIA. | |
| (41) DUNS+4 (13 digit DUNS Number) | Exempt—5 U.S.C. 552(b)(4). | |
| (42) Financial Institution | Exempt—5 U.S.C. 552(b)(4). | |
| (43) Account Number | Exempt—5 U.S.C. 552(b)(4). | |
| (44) ABA Routing ID | Exempt—5 U.S.C. 552(b)(4). | |
| (45) Automated Clearing House (ACH) Network U.S. Phone | Exempt—5 U.S.C. 552(b)(4). | |
| (46) ACH Non-U.S. Phone | Exempt—5 U.S.C. 552(b)(4). | |
| (47) ACH Fax | Exempt—5 U.S.C. 552(b)(4). | |
| (48) ACH E-Mail | Exempt—5 U.S.C. 552(b)(4). | |
| (49) Broker Commission Information (Including Rates and Percentages). | Exempt—5 U.S.C. 552(b)(4). | |
| (50) Address of Person Witnessing Lease Signature if Person is an individual. | Exempt—5 U.S.C. 552(b)(6). | |

FOIA REVIEW OF DATA ELEMENTS IN GSA LEASE DOCUMENTS—Continued

| Data field | Exempt status | Public comments |
|---|---|---|
| (51) Security Information or Requirements Deemed Sensitive. | Exempt—5 U.S.C. 552(b)(7). | |

Dated: January 8, 2014.

**John D. Thomas,**

*Director, Center for Lease Policy, Public Building Services.*

[FR Doc. 2014–00684 Filed 1–15–14; 8:45 am]

**BILLING CODE 6820–23–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier 21226–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate below or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before March 17, 2014.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

**FOR FURTHER INFORMATION CONTACT:** Information Collection *Clearance staff, Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier 21226–60D for reference.

Information Collection Request Title: ASPE Generic Clearance for the Collection of Qualitative Research and Assessment.

*Abstract:* The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting a generic clearance from the OMB for purposes of conducting qualitative research. ASPE conducts qualitative research to gain a better understanding of emerging health policy issues, develop future intramural and extramural research projects, and to ensure HHS leadership, agencies and offices have recent data and information to inform program and policy decision-making.

*Need and Proposed Use of the Information:* ASPE's mission is to advise the Secretary of the Department of Health and Human Services on policy development in health, disability, human services, data, and science, and provides advice and analysis on economic policy. ASPE leads special initiatives, coordinates the Department's evaluation, research and demonstration activities, and manages cross-Department planning activities such as strategic planning, legislative planning, and review of regulations. Integral to this role, ASPE conducts research and evaluation studies, develops policy analyses, and estimates the cost and benefits of policy alternatives for HHS related programs.

The goal of developing these activities is to identify emerging policy issues and research gaps to ensure the successful implementation of HHS programs.

*Likely Respondents:* Policy experts, national, state and local health representatives, healthcare providers, and representatives of other health organizations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Interviews, focus groups, questionnaires and other qualitative methods ..... | 747 | 1 | 1 | 747 |

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Keith A. Tucker,**

*Information Collection Clearance Officer.*

[FR Doc. 2014–00705 Filed 1–15–14; 8:45 am]

**BILLING CODE 4150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of Establishment of the National Advisory Committee on Children and Disasters and Call for Nominees

**AGENCY:** Department of Health and Human Services, Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) Office of the

Secretary announces establishment of the National Advisory Committee on Children and Disasters (NACCD). The Advisory Committee will provide advice and consultation to the HHS Secretary on pediatric medical disaster planning, preparedness, response, and recovery with respect to the medical and public health needs of children in relation to disasters. The Office of the Assistant Secretary for Preparedness and Response (ASPR) shall provide management and administrative oversight to support the activities of the Advisory Committee. The Office of the Secretary is accepting application submissions from qualified individuals who wish to be considered for membership on the NACCD. Up to six new voting members with expertise in pediatric medical disaster planning, preparedness, response, or recovery will be selected for the Committee in the following categories: Non-federal health care professionals and representatives from state, local, territorial, or tribal agencies. Please visit the NACCD Web site at *www.phe.gov/naccd* for all application submission information and instructions. Application submissions will be accepted for 30 calendar days from the date this posting is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** CAPT Charlotte Spires, DVM, MPH, DACVPM, Executive Director and Designated Federal Official, National Advisory Committee on Children and Disasters, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, Thomas P. O'Neill Federal Building, Room number 14F18, 200 C St. SW., Washington, DC 20024; Office: 202–260–0627, Email address: *charlotte.spires@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), and section 2811A of the Public Health Service (PHS) Act (43 U.S.C. 300hh–10a), as added by section 103 of the Pandemic and All Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), the HHS Secretary, in consultation with the Secretary of the U.S. Department of Homeland Security, established the National Advisory Committee on Children and Disasters (NACCD). The purpose of the NACCD is to provide advice and consultation to the HHS Secretary with respect to the medical and public health needs of children in relation to disasters. The Office of the Assistant Secretary for Preparedness and Response provides management and administrative oversight to support the activities of the NACCD.

*Description of Duties:* The NACCD: (1) Provides advice and consultation with respect to the activities addressing at-risk individuals carried out pursuant to section 2814 of the PHS Act as applicable and appropriate (42 U.S.C. 300hh–16); (2) evaluates and provides input with respect to the medical and public health needs of children as they relate to preparation for, response to, and recovery from all-hazards emergencies; (3) provides advice and consultation with respect to state emergency preparedness and response activities and children, including related drills and exercises pursuant to the preparedness goals under the National Health Security Strategy authorized under section 2802(b) of the PHS Act (42 U.S.C. 300hh–1); and (4) provides advice and recommendations to the HHS Secretary with respect to children and the medical and public health grants and cooperative agreements implementing the Public Health Emergency Preparedness and Hospital Preparedness Programs and other activities, as applicable to preparedness and response activities authorized under Titles III and XXVIII of the PHS Act (42 U.S.C. 241 et seq.).

*Structure:* The Advisory Committee consists of not more than 15 voting members, including the Chairperson. Members will be appointed by the HHS Secretary, in consultation with such other Secretaries as may be appropriate, from among the nation's preeminent scientific, public health, and medical experts in areas consistent with the purpose and functions of the NACCD. Individuals necessary to perform the duties of the NACCD may include:

- The Assistant Secretary for Preparedness and Response;
- The Director of the Biomedical Advanced Research and Development Authority;
- The Director of the Centers for Disease Control and Prevention;
- The Commissioner of Food and Drugs;
- The Director of the National Institutes of Health;
- The Assistant Secretary for the Administration for Children and Families;
- The Administrator of the Federal Emergency Management Agency;
- At least two non-federal health care professionals with expertise in pediatric medical disaster planning, preparedness, response, or recovery;
- At least two representatives from state, local, territorial, or tribal agencies with expertise in pediatric disaster planning, preparedness, response, or recovery; and
- Representatives from such federal agencies (such as the Department of Education and the Department of Homeland Security) as determined necessary to fulfill the duties of the Advisory Committee.

A member of the Advisory Committee will serve for a term of four years, except that the Secretary may adjust the terms of the initial Advisory Committee appointees in order to provide for a staggered term of appointment of all members. Members who are not full-time or permanent part-time federal employees shall be appointed by the Secretary as Special Government Employees (5 U.S.C. 3109).

Dated: January 10, 2014.

**Nicole Lurie,**

*Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.*

[FR Doc. 2014–00791 Filed 1–15–14; 8:45 am]

BILLING CODE 4150–37–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 30-Day Submission Period for Requests for ONC-Approved Accreditor (ONC–AA) Status

**AGENCY:** Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice announces the 30-day period for submission of requests for ONC-Approved Accreditor (ONC–AA) status.

**Authority:** 42 U.S.C. 300jj–11.

**DATES:** The 30-day submission period begins January 16, 2014 and will end on February 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Judy Murphy, Deputy National Coordinator for Programs and Policy, Office of the National Coordinator for Health Information Technology, 202–690–7151.

**SUPPLEMENTARY INFORMATION:** On June 6, 2011, ONC approved the American National Standards Institute (ANSI) as the ONC–AA. In accordance with 45 CFR § 170.503(f)(2), an ONC–AA's status will expire not later than 3 years from the date its status was granted by the National Coordinator. To ensure the continuity of the accreditation process and the ongoing responsibilities of the ONC–AA under the ONC HIT Certification Program, we are seeking requests for ONC–AA status for the 3-year term that would follow the term of

the current ONC–AA (ANSI). Accordingly, this notice is issued pursuant to § 170.503(b), which requires the National Coordinator for Health Information Technology (the National Coordinator) to publish a notice in the **Federal Register** to announce the 30-day period during which requests for ONC–AA status may be submitted. In order to be considered for ONC–AA status, an accreditation organization must submit a written request to the National Coordinator that includes the information required by § 170.503(b) within the 30-day period specified in this notice. Section 170.503(b) requires an accreditation organization to submit the following information to demonstrate its ability to serve as an ONC–AA:

(1) A detailed description of the accreditation organization's conformance to ISO/IEC17011:2004 (incorporated by reference in § 170.599) and experience evaluating the conformance of certification bodies to ISO/IEC Guide 65:1996 (incorporated by reference in § 170.599);

(2) A detailed description of the accreditation organization's accreditation requirements[,] as well as how those requirements would complement the Principles of Proper Conduct for ONC–ACBs and ensure the surveillance approaches used by ONC–ACBs include the use of consistent, objective, valid, and reliable methods;

(3) Detailed information on the accreditation organization's procedures that would be used to monitor ONC–ACBs;

(4) Detailed information, including education and experience, about the key personnel who review organizations for accreditation; and

(5) Procedures for responding to, and investigating, complaints against ONC–ACBs.

Requests for ONC–AA status may be submitted by email to *ONC–AA@hhs.gov* and should include ''Request for ONC–AA Status'' in the subject line. Alternatively, requests for ONC–AA status may be submitted by regular or express mail to: Office of the National Coordinator for Health Information Technology, Attention: ONC HIT Certification Program—Request for ONC–AA Status, 330 C Street SW., Washington, DC 20201. In accordance with § 170.505, the official date of receipt of an email submission will be the date on which it was sent, and the official date of a submission by regular or express mail will be the date of the delivery confirmation. To clarify, email submissions may be sent up to and through 11:59 p.m. on the last day of the submission period. Additional information about requesting ONC–AA status and the ONC HIT Certification Program can be found on the ONC Web site at: *http://healthit.hhs.gov/certification.*

Dated: January 10, 2014.

**Jacob Reider,**

*Acting National Coordinator for Health Information Technology.*

[FR Doc. 2014–00797 Filed 1–15–14; 8:45 am]

**BILLING CODE 4150–45–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number CDC–2014–0002; NIOSH 248–A]**

### World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Time and Date:* 9:30 a.m.–5:00 p.m., February 14, 2014 (All times are Eastern Standard Time)

*Place:* This meeting will be available via telephone and Web Conference. Audio will be available by telephone and visuals will be available by Web Conference. The USA toll-free, dial-in number is 1 (888) 381–5771. To be connected to the meeting, you will need to provide the following participant code to the operator: 8501294. To obtain further instructions on how to access the meeting online through Web Conference, see the instructions at the Committee's meeting Web site: *http://www.cdc.gov/wtc/stac_meeting.html.*

*Public Comment Time and Date:* 11:30 a.m.–12:15 p.m., February 14, 2014.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below, by February 10, 2014. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session.

*Status:* Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 100 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

*Background:* The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. sec. 300mm–300mm–61.

*Purpose:* The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions. Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the WTC Program Administrator. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks (''survivors''). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under Section 300mm–1(a) is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was reissued on May 9, 2013, and will expire on May 9, 2015.

*Matters To Be Discussed:* The agenda for the Advisory Committee meeting includes a brief update on the policies and regulations developed by the WTC Health Program and development of recommendations for research.

The agenda is subject to change as priorities dictate.

To view the notice, visit *http://www.regulations.gov* and enter CDC–

2014–0002 in the search field and click ''Search.''

Public Comment Sign-up and Submissions to the Docket: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

*Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

*Email: nioshdocket@cdc.gov.*

*Telephone:* (513) 533–8611.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted through *http://www.regulations.gov* by February 10, 2014. Efforts will be made to provide the two-page written comments received by the deadline below to the committee members before the meeting. Comments in excess of two pages will be made publicly available at *http://www.regulations.gov.* To view background information and previous submissions go to NIOSH docket *http://www.cdc.gov/niosh/docket/archive/docket248.html.*

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to *http://www.regulations.gov* within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (e.g., medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and, if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

*Contact Person For More Information:* Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 2400 Century Parkway NE., Mail Stop E–20, Atlanta, Georgia 30345, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–00715 Filed 1–15–14; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Times and Dates:*

6:00 p.m.–7:00 p.m., February 24, 2014 (Closed)

8:00 a.m.–5:00 p.m., February 25, 2014 (Closed)

8:00 a.m.–5:00 p.m., February 26, 2014 (Closed)

8:00 a.m.–12:00 p.m., February 27, 2014 (Closed)

*Place:* Courtyard Marriott, 130 Clairemont Drive, Decatur, Georgia 30030, Telephone: (404) 371–0204.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217''.

*Contact Person For More Information:* George Bockosh, M.S., Scientific Review Officer, CDC/NIOSH, 626 Cochrans Mill Road, Mailstop P–05, Pittsburgh, Pennsylvania 15236, Telephone: (412) 386–6465 and Joan F. Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road NE., Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–00714 Filed 1–15–14; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

### Request for Nominations of Candidates To Serve on the Advisory Committee on Breast Cancer in Young Women

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the Advisory Committee on Breast Cancer in Young Women (ACBCYW).

The Committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives.

The Secretary, HHS, acting through the Director, CDC, shall appoint to the advisory committee nominees with expertise in breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women. Members may be invited to serve for up to four years. The next cycle of selection of candidates

will begin in the Spring of 2014, for selection of potential nominees to replace members whose terms will end on November 30, 2014.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW's objectives *http://www.cdc.gov/maso/FACM/facmACBCYW.htm.* The U.S. Department of Health and Human Services will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Committee is not impaired. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status. Consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

Current curriculum vitae or resume, including complete contact information (name, affiliation, mailing address, telephone numbers, fax number, email address); A 150 word biography for the nominee; At least one letter of recommendation from a person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS.

Nominations should be submitted (postmarked or received) by February 25, 2014.

Electronic submission: You may submit nominations, including attachments, electronically to *acbcyw@cdc.gov.* Regular, Express or Overnight Mail: Written nominations may be submitted to the following addressee only: Temeika L. Fairley, Ph.D., c/o ACBCYW Designated Federal Officer, CDC, 4770 Buford Highway NE., Mailstop F–76, Chamblee 107 Room 4225.4, Atlanta, Georgia 30341.

Telephone and facsimile submissions cannot be accepted. Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–00713 Filed 1–15–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel NCI Program Project Meeting II (P01).

*Date:* February 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892–9750, 240–276–6456, *tangd@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Initial Review Group Subcommittee F—Institutional Training and Education.

*Date:* February 25, 2014.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Timothy C. Meeker, Ph.D., MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Rockville, MD 20850–9750, 240–276–6464, *meekert@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel Innovative Technologies for Cancer Bio specimen Science.

*Date:* February 27, 2014.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Donald L. Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–6382, *donald.coppock@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel 3D Tissue Culture System for Tumor Microenvironment.

*Date:* March 18–19, 2014.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Adriana Stoica, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Bethesda, MD 20892–9750, 240–276–6368, *Stoicaa2@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel Early Stage Innovative Molecular Analysis Technology Development for Cancer (R21).

*Date:* March 27, 2014.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: January 10, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–00673 Filed 1–15–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section, Transplantation, Tolerance, and Tumor Immunology.

*Date:* February 6, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

*Date:* February 10–11, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

*Contact Person:* Mark D Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *lindnermd@csr.nih.gov*.

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

*Date:* February 13–14, 2014.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

*Contact Person:* Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov*.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

*Date:* February 13–14, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Behrouz Shabestari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 10–234: Bioengineering Research Partnerships.

*Date:* February 13, 2014.

*Time:* 9:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Torrance South Bay, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR13–282: PET and SPECT Imaging Ligands as Biomarkers for Drug Discovery.

*Date:* February 13, 2014.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Torrance South Bay, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR13–137: Bioengineering Research Grants.

*Date:* February 13, 2014.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Torrance South Bay, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

*Date:* February 14, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: January 10, 2014.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–00675 Filed 1–15–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Clinical Trial of a Multifactorial Fall Injury Prevention Strategy in Older Persons.

*Date:* February 6, 2014.

*Time:* 11:15 a.m. to 2:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2c212, 7201 Wisconsin Avenue, Bethesda, Md 20892, (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: January 10, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–00672 Filed 1–15–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Start-Up Exclusive Patent License Agreement: Treatment of Inflammatory Bowel Disease (IBD), Including Ulcerative Colitis and Crohn's Disease

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Patent License Agreement to Paris Therapeutics, a company having a place of business in Santee, CA, to practice the inventions embodied in the following patent applications:

1. U.S. Provisional Patent Application. No. 61/488,671, filed 20 May 2011 HHS Ref. No.: E–073–2011/0–US–01 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
2. PCT Application No. PCT/US2012/028926, filed 13 March 2012 HHS Ref. No.: E–073–2011/1–PCT–02 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
3. U.S. Patent Application No. 13/419,203, filed 13 March 2012 HHS Ref. No.: E–073–2011/1–US–01 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
4. Australian Patent Application claiming priority to PCT/US2012/028926, application number not available at this time, filed 26 November 2013 HHS Ref. No.: E–073–2011/1–AU–03 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
5. Canadian Patent Application claiming priority to PCT/US2012/028926, application number not available at this time, filed 19 November 2013 HHS Ref. No.: E–073–2011/1–CA–04 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
6. European Patent Application No. 12790157.7, filed 14 November 2013 HHS Ref. No.: E–073–2011/1–EP–05 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
7. Japanese Patent Application claiming priority to PCT/US2012/028926, application number not available at this time, filed 20 November 2013 HHS Ref. No.: E–073–2011/1–JP–06 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
8. Korean Patent Application claiming priority to PCT/US2012/028926, application number not available at this time, filed 18 December 2013 HHS Ref. No.: E–073–2011/1–KR–07 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
9. Mexican Patent Application No. MX/a/2013/ 013329, filed 14 November 2013 HHS Ref. No.: E–073–2011/1–MX–08 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology and Antibodies Thereof Inventors: Richard Siegel (NIAMS), Francoise Meylan (NIAMS), and Yun-Jeong Song (NIAMS)
10. U.S. Provisional Patent Application No. 60/879,668, filed 10 January 2007, now expired, HHS Ref. No.: E–011–2007/0–US–01 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology Inventors: Richard Siegel (NIAMS) and Francoise Meylan (NIAMS)
11. U.S. Patent Application No. 11/972,395, filed 10 January 2008, now abandoned, HHS Ref. No.: E–011–2007/0–US–02 Titled: Blockade of TL1A–DR3 Interactions to Ameliorate T Cell Mediated Disease Pathology Inventors: Richard Siegel (NIAMS) and Francoise Meylan (NIAMS)

The patent rights in these inventions have been assigned to the Government of the United States of America. The territory of the prospective Start-Up Exclusive Patent License Agreement may be worldwide, and the field of use may be limited to ''Antibodies against TL1A for the Treatment of Inflammatory Bowel Disease (IBD), including Ulcerative Colitis and Crohn's Disease.''

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 31, 2014 will be considered.

**ADDRESSES:** Requests for copies of the patent application(s), inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Patent License Agreement should be directed to: Jaime M. Greene, M.S., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5559; Facsimile: (301) 402–0220; Email: *greenejaime@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

**SUPPLEMENTARY INFORMATION:** This technology concerns anti-mouse TNF family ligand Tumor Necrosis Factor (ligand) Superfamily, Member 15 (TL1A) and anti-human TL1A monoclonal antibodies and the hybridoma cell lines generating these antibodies, as well as methods of treating autoimmune inflammatory diseases by blocking the interaction between TL1A and Tumor Necrosis Factor Receptor superfamily, Member 25 (DR3). This technology may be useful for the development of diagnostics and therapeutics for autoimmune inflammatory disease.

The prospective Start-Up Exclusive Patent License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective Start-Up Exclusive Patent License Agreement may be granted unless the NIH receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the contemplated Start-Up Exclusive Patent License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the

Freedom of Information Act, 5 U.S.C. 552.

Dated: January 9, 2014.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2014–00674 Filed 1–15–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement (BSEE)

**[Docket ID BSEE–2013–0013; OMB Control Number 1014–0011; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]**

### Information Collection Activities: Platforms and Structures; Proposed Collection; Comment Request

**ACTION:** 60-day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under Subpart I, *Platforms and Structures.*

**DATES:** You must submit comments by March 17, 2014.

**ADDRESSES:** You may submit comments by either of the following methods listed below:

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled *Enter Keyword or ID,* enter BSEE–2013–0013 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email nicole.mason@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0011 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mason, Regulations and Standards Branch at (703) 787–1605 to request additional information about this ICR.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 250, Subpart I, *Platforms and Structures.*

*OMB Control Number:* 1014–0011.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to the mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Several requests for approval required in Subpart I are subject to cost recovery, and BSEE regulations specify service fees for these requests.

Regulations implementing these responsibilities are among those delegated to BSEE to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This ICR addresses the regulations at 30 CFR part 250, Subpart I, and the associated supplementary notices to lessees and operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

We use the information to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases—design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

We protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), and under regulations at 30 CFR 250.197 and 30 CFR 252, which addresses disclosure of data and information to be made available to the public. No items of a sensitive nature are collected. Responses are mandatory or are required to obtain a benefit.

*Frequency:* On occasion, weekly, monthly, semi-annually, annually, and as a result of situations encountered depending upon the requirements.

*Description of Respondents:* Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 116,341 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

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BURDEN BREAKDOWN

| Citation 30 CFR 250 Subpart I and related NTLs | Reporting and/or Recordkeeping Requirement | Hour Burden | Average No. of Annual Reponses | Annual Burden Hours |
|---|---|---|---|---|
| | | Non-Hour Cost Burdens* | | |
| **General Requirements for Platforms** | | | | |
| 900(b), (c), (e); 901(b); 905; 906; 910(c), (d); 911(c), (g); 912; 913; 919; NTL(s) [PAP 904-908; PVP 909-918] | Submit application, along with reports/surveys and relevant data, to install new platform or floating production facility or significant changes to approved applications, including but not limited to: summary of safety factors utilized in design of the platform; use of alternative codes, rules, or standards; CVA changes; and Platform Verification Program (PVP) plan for design, fabrication and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with BSEE and/or USCG. Re/Submit application for major modification(s)/repairs to any platform and obtain approval; and related requirements. | 102 | 89 applications | 9,078 |
| | | $22,734 x 2 PVP = $45,468 | | |
| | | $3,256 x 10 fixed structure = $32,560 | | |
| | | $1,657 x 27 Caisson/Well Protector = $44,739 | | |
| | | $3,884 x 50 modifications/repairs = $194,200 | | |
| 900(b)(4) | Submit application for approval to convert an existing platform for a new purpose. | 60 | 5 applications | 300 |
| 900(b)(5) | Submit application for approval to convert an existing mobile offshore drilling unit (MODU) for a new purpose. | 120 | 2 applications | 240 |
| 900(c) | Notify BSEE within 24 hours of damage and emergency repairs and request approval of repairs. Submit written completion report within 1 week upon completion of repairs. | 4 | 12 notices/ requests; reports | 48 |
| | | 20 | | 240 |
| 900(e) | Submit platform installation date and the final as-built location data to the Regional Supervisor within 45 days after platform installation. | 20 | 140 submittals | 2,800 |
| 900(e) | Resubmit an application for approval to install a platform if it was not installed within 1 year after approval (or other date specified by BSEE). | 50 | 5 applications | 250 |
| 901(b) | Request approval for alternative codes, rules, or standards. | Burden covered under 30 CFR 250, Subpart A, 1014-0022. | | 0 |
| 903 | Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and provide location/make available to BSEE for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of nondestructive examination records, inspection results, and records of repair not covered elsewhere. | 160 | 130 lessees | 20,800 |

| | | | | |
|---|---|---|---|---|
| 903(c); 905(k) | Submit certification statement [a certification statement is not considered information collection under 5 CFR 1320.3(h)(1); the burden is for the insertion of the location of the records on the statement and the submittal to BSEE]. | This statement is submitted with the application. | | 0 |
| **Subtotal** | | | **383 responses** | **33,756 hours** |
| | | | **$317,967 Non-Hour Cost Burdens** | |
| **Platform Verification Program** | | | | |
| 911(c-e); 912(a-c); 914; | Submit complete schedule of all phases of design, fabrication, and installation with required information; also submit Gantt Chart with required information and required nomination/documentation for CVA, or to be performed by CVA. | 130 | 5 schedules | 650 |
| 912(a) | Submit design verification plans with your DPP or DOCD. | Burden covered under 30 CFR 550, Subpart B, 1010-0151. | | 0 |
| 913(a) | Resubmit a changed design, fabrication, or installation verification plan for approval. | 60 | 2 plans | 120 |
| 916(c) | Submit interim and final CVA reports and recommendations on design phase. | 250 | 10 reports | 2,500 |
| 917(a), (c) | Submit interim and final CVA reports and recommendations on fabrication phase, including notices to BSEE and operator/lessee of fabrication procedure changes or design specification modifications. | 150 | 10 reports | 1,500 |
| 918(c) | Submit interim and final CVA reports and recommendations on installation phase. | 130 | 10 reports | 1,300 |
| **Subtotal** | | | **37 responses** | **6,070 hours** |
| **Inspection, Maintenance, and Assessment of Platforms** | | | | |
| 919(a) | Develop in-service inspection plan and keep on file. Submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results. | 130 | 130 lessees | 16,900 |
| 919(b) NTL | After an environmental event, submit to Regional Supervisor initial report followed by updates and supporting information. | 25 (initial) | 150 reports | 3,750 |
| | | 15 (update) | 90 reports | 1,350 |
| 919(c) NTL | Submit results of inspections, description of any damage, assessment of structure to withstand conditions, and remediation plans. | 150 | 200 results | 30,000 |
| 920(a) | Demonstrate platform is able to withstand environmental loadings for appropriate exposure category. | 30 | 400 occurrences | 12,000 |
| 920(c) | Submit application and obtain approval from the Regional Supervisor for mitigation actions (includes operational procedures). | 40 | 200 applications | 8,000 |
| 920(e) | Submit a list of all platforms you operate, and appropriate supporting data, every 5 years or as directed by the Regional Supervisor. | 100 | 130 operators / 5 years = 26 | 2,600 |

| | | | | |
|---|---|---|---|---|
| | | | per year | |
| 920(f) | Obtain approval from the Regional Supervisor for any change in the platform. | 50 | 2 approvals | 100 |
| **Subtotal** | | | **1,198 responses** | **74,700 hours** |
| **General Departure** | | | | |
| 900 thru 921 | General departure and alternative compliance requests not specifically covered elsewhere in Subpart I regulations. | 10 | 10 requests | 100 hours |
| **Subtotal** | | | **10 responses** | **100 hours** |
| **TOTAL BURDEN** | | | **1,628 Responses** | **114,626 Hours** |
| | | | **$316,967 Non-Hour Cost Burdens** | |

**BILLING CODE 4310–VH–C**

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified four non-hour cost burdens for various platform applications/installations. The platform fees are as follows: $22,734 for installation under the Platform Verification Program; $3,256 for installation of fixed structures under the Platform Approval Program; $1,657 for installation of Caisson/Well Protectors; and $3,884 for modifications and/or repairs (see § 250.125). We have not identified any other non-hour cost burdens associated with this collection of information, and we estimate a total reporting non-hour cost burden of $316,967.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Procedures:* 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.

*BSEE Information Collection Clearance Officer:* Cheryl Blundon (703) 787–1607.

Dated: January 9, 2014.

**Robert W. Middleton,**

*Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2014–00712 Filed 1–15–14; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–R–2011–N152; 1265–0000–10137–S3]**

### Conboy Lake National Wildlife Refuge, Klickitat County, WA; Draft Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Conboy Lake National Wildlife Refuge (NWR or refuge) in Klickitat County, Washington. The draft CCP/EA describes our proposals for managing the refuge for the next 15 years.

**DATES:** To ensure consideration, please send your written comments by February 18, 2014.

**ADDRESSES:** Send your comments or requests for more information by any of the following methods:

- *Email: mcriver@fws.gov*. Include ''Conboy Lake NWR CCP'' in the subject line of the message.
- *Fax:* Attn: Conboy Lake NWR CCP, (509) 546–8303.
- *U.S. Mail:* Mid-Columbia River National Wildlife Refuge Complex, Conboy Lake NWR CCP, 64 Maple Street, Burbank, WA 99323.
- *In-Person Drop-off:* You may drop off comments during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rich Albers, Refuge Manager, Conboy Lake National Wildlife Refuge, (509) 546–8317; *rich_albers@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

## Introduction

With this notice, we continue the CCP process for Conboy Lake NWR. We started this process through a notice in the **Federal Register** (76 FR 41286; July 13, 2011).

Conboy Lake National Wildlife Refuge encompasses approximately 7,000 acres in Klickitat County, Washington. The refuge exists in the transition zone between arid eastern Washington and wet western Washington, near the southern base of Mt. Adams. The refuge manages wet prairie, emergent marsh, scrub-shrub, and forest land habitats. Conboy Lake NWR is managed with special emphasis on greater Sandhill cranes, Oregon spotted frogs, Mardon skippers, Ames' milk-vetch, and Oregon coyote thistle.

## Background

*The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

*Public Outreach*

A press release was sent to all media outlets in the area on June 1, 2011, and we held a public open house on June 14, 2011. A **Federal Register** notice announcing our intent to develop a CCP was published July 13, 2011. Our public scoping period began July 13, 2011, and ended August 12, 2011. We then mailed a planning update in September 2011 which outlined the comments received from the public and other organizations. We also solicited input from other Federal, State, and local agencies and tribes on issues of concern. Comments were considered and incorporated into the draft CCP/EA.

## CCP Alternatives We Are Considering

To address the issues raised during the public scoping process, we developed and evaluated the following alternatives, briefly summarized below. A full description of each alternative is in the EA.

*Alternative 1: No-Action*

Under Alternative 1, we would continue with current management of the refuge. Most management actions are aimed at protection, enhancement, and restoration of habitats. We would continue the current water flooding/drawdown regime. Haying would be used to control invasive reed canarygrass in meadow habitats, and meadows would continue to benefit from tree removal measures. Excess vegetation would be removed in all aquatic habitats. Prescribed fire and other integrated pest management techniques would continue to control invasive species.

Visitor services would continue in limited capacities. Wildlife observation and photography would still occur on limited parts of the refuge. Hunting and fishing would remain as-is. Cultural resources would continue to be protected as mandated by law and policy.

*Alternative 2: Potential Changes*

Under Alternative 2, grazing would be added to haying to control reed canarygrass. An aggressive bullfrog and bullhead fish control program would be implemented. Actively creating snags in all forest types would occur to benefit insectivorous birds, including woodpeckers, and cavity-nesting species. Forest thinning would allow for structural diversity and regeneration of understory species and young trees.

The Willard Springs Trail would be realigned, lengthened, and given a new interpretive emphasis. Environmental education would receive greater attention. The recruitment and use of volunteers would be expanded for all visitor services, especially education. New exhibits would be installed at refuge headquarters and along the Willard Springs Trail, Observation Overlook, and the Whitcomb-Cole Hewn Log House. Hunting and fishing would remain the same, with the exception of eliminating deer hunting.

Additional cultural resources activities would take place, including a resources overview, establishing new tribal partnerships, evaluating the National Register eligibility of archeological sites, and developing a new inadvertent discovery plan.

## Public Availability of Documents

In addition to the methods listed in **ADDRESSES**, the draft CCP/EA may be obtained or viewed at our Web site at *www.fws.gov/refuge/conboy_lake/* and the following libraries:

- Hood River Library, 502 W State St., Hood River, OR 97031
- White Salmon Valley Community Library, 77 NE Wauna Ave., White Salmon, WA 98672
- Foley Center Library, Gonzaga University, 502 E Boone Ave., Spokane, WA 99258–0095

## Public Comments

There will be additional opportunities to provide public input throughout the CCP process; they will be announced in press releases, planning updates, and on our Web site at *www.fws.gov/refuge/conboy_lake/*.

## Public Availability of Comments

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.

Dated: January 6, 2014.

**Richard Hannan,**

*Acting Regional Director, Pacific Region, Portland, Oregon.*

[FR Doc. 2014–00246 Filed 1–15–14; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLAZ910000.L12100000.XP0000LXSS150A00006100.241A]**

## State of Arizona Resource Advisory Council Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Change in Public Meeting Date.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will

meet, in Phoenix, Arizona, as indicated below.

**DATES:** The January 28–29, 2014, Arizona RAC meeting has been rescheduled for Wednesday, January 29, and Thursday, January 30, 2014.

**ADDRESSES:** The meeting will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

**FOR FURTHER INFORMATION CONTACT:** Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504. 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:** 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 Arizona. Planned agenda items include: a welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; updates on the RAC's Colorado River District Grazing Subcommittee; Section 106 Consultation Process; Department of the Interior Themes and Landscape Level Opportunities for BLM; Sonoran Landscape Pilot; U.S. Forest Service Recreation Fee Program Proposals; reports by the RAC Working Groups; RAC questions on BLM District Manager Reports; and other items of interest to the RAC. The Recreation RAC (RRAC) Working Group will review and make recommendations on U.S. Forest Service recreation fee program proposals. Members of the public are welcome to attend the Working Group and Business meetings. A public comment period is scheduled on the second day (Business meeting) from 11:15 a.m. to 11:45 a.m. during the RRAC Session for any interested members of the public who wish to address the Council on BLM or Forest Service recreation fee programs, and again from 1:30 p.m. to 2 p.m. for any interested members of the public who wish to address the Council on any other BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. The final meeting agenda will be available one week prior to the meeting and posted on the BLM Web site at *http://www.blm.gov/az/st/en/res/rac.html*. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the RRAC and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will review recreation fee program proposals at this meeting.

**Raymond Suazo,**

*State Director.*

[FR Doc. 2014–00796 Filed 1–15–14; 8:45 am]

**BILLING CODE 4310–32–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVL03000.L58480000.EU0000 241A; N–86209; 14–08807; TAS: 14X5232]**

### Notice of Realty Action: Modified Competitive Sale (N–86209) of Public Land in Lincoln County, NV

*Correction*

In notice document 2013–31597 appearing on pages 840 through 842 in the issue of Tuesday, January 7, 2014, make the following correction.

1. On page 840, in the second column, in the **DATES** section ''February 21, 2013'' should read ''February 21, 2014''.

[FR Doc. C1–2013–31597 Filed 1–15–14; 8:45 am]

**BILLING CODE 1501–05–D**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14619; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Army Corps of Engineers, Little Rock District, Little Rock, AR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers, Little Rock District (Little Rock District) has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Little Rock District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Little Rock District at the address in this notice by February 18, 2014.

**ADDRESSES:** Mr. Rodney Parker, District Archaeologist, U.S. Army Corps of Engineers, Little Rock District, P.O. Box 867, Little Rock, AR 72203, telephone (501) 324–5752, email *rodney.d.parker@usace.army.mil*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Little Rock District and in the physical custody of the University of Arkansas, Fayetteville. The human remains and associated funerary objects were removed from Millwood Lake, in Howard, Little River, and Sevier Counties, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by Little Rock District and the St. Louis District's Mandatory Center of Expertise for the Curation and Management of Archaeological Collections professional staff in consultation with

representatives of the Caddo Nation of Oklahoma; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Quapaw Tribe of Indians; The Osage Nation (previously listed as the Osage Tribe); and the United Keetoowah Band of Cherokee Indians in Oklahoma.

**History and Description of the Remains**

In 1961, human remains representing, at minimum, three individuals were removed from 3HO11 (the Bell site), Millwood Reservoir, Howard County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, and the human remains have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. No associated funerary objects are present.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates a late Fourche Maline phase with a Caddoan Mississippian occupation of the site from 500 A.D. to the Contact Period.

In 1962, human remains representing, at minimum, 11 individuals were removed from 3HO1 (the Mineral Springs site), Millwood Reservoir, Howard County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, and the human remains and associated funerary objects have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. The 106 associated funerary objects are 10 lithic flakes, 12 chipped stone tools, 1 quartz crystal, 1 polished stone celt, 13 ceramic sherds, 32 complete ceramic vessels, 5 fragmented ceramic vessels, 3 ear spools, 7 fragments of shell, 1 lot of shell fragments, 8 beads, 8 clay pipes, and 5 fragments of baked clay.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates a Fourche Maline phase with a Caddoan Mississippian occupation of the site from 500 B.C. to the Contact Period.

In the early 1960s, human remains representing, at minimum, 47 individuals were removed from 3LR49 (the Old Martin Place site), Millwood Reservoir, Little River County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, and the human remains and associated funerary objects have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. The 8 associated funerary objects are three bone hairpins, one complete ceramic vessel, one conch shell effigy vessel, one bone tube, one piece of chert, and one carved animal bone.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates a Fourche Maline phase with a Caddoan Mississippian occupation for the site from 500 B.C. to the Contact Period.

In the early 1960s, human remains representing, at minimum, 11 individuals were removed from 3LR12 (the White Cliffs site), Millwood Reservoir, Little River County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, Fayetteville, and the human remains and associated funerary objects have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. The 19 associated funerary objects are three lithic flakes, one ceramic sherd, three modified faunal bones, two unmodified pieces of fauna, one pipe stem, seven projectile points, one tool kit (including a sandstone abrader, flakes, and pigment), and one clay ball.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates an early Caddoan Mississippian occupation of the site from 900–1200 A.D.

In the early 1960s, human remains representing, at minimum, seven individuals were removed from 3SV10 (the Millers Crossing site), Millwood Reservoir, Sevier County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, Fayetteville, and the human remains and associated funerary objects have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. The 16 associated funerary objects are five reconstructed vessels, two lumps of pigment, three pebbles, two stone fragments, three projectile points, and one sandstone fragment.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates a early Caddoan Mississippian occupation of the site from 900–1200 A.D.

In the early 1960s, human remains representing, at minimum, five individuals were removed from 3SV15 (the Graves Chapel site), Millwood Reservoir, Sevier County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, Fayetteville, and the human remains have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. No associated funerary objects are present.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates Late Archaic period (3000–650 B.C.) and Late Woodland A.D. (500–900) to Early Caddoan Mississippian (A.D. 900–1200) components of the site.

In the early 1960s, human remains representing, at minimum, two individuals were removed from 3SV21, Millwood Reservoir, Sevier County, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, Fayetteville, and the human remains have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. No associated funerary objects are present.

Based on the physical preservation of the remains and associated archeological context, the human remains are determined to be of Native American ancestry. Archeological evidence indicates a late prehistoric period occupation of the site from 900–1500 A.D.

In the late 1950's, human remains representing, at minimum, two individuals were removed from an unknown site on the Millwood Reservoir, in Howard, Little River, or Sevier Counties, AR. The burials were excavated during legally authorized excavations by the University of Arkansas, and the human remains and associated funerary objects have been housed at the University of Arkansas, Fayetteville, since their excavation. No known individuals were identified. The three associated funerary objects are ceramic sherds.

The remains were recovered during the initial testing of prehistoric sites with Native American cultural contexts in the Millwood Reservoir area and are likely from a prehistoric site in the area. Based on the physical preservation of the remains and the likely Native American prehistoric archeological context, the human remains are

determined to be of Native American ancestry. Archeological evidence from sites in the region date to the late prehistoric period, from 900–1500 A.D.

Five lines of evidence support a cultural affiliation finding for the site including geographical, archeological, anthropological, historical, and oral history information gathered during consultation. The Caddo have a long association with the territory in which they were first encountered by the Europeans including in southwestern Arkansas. The emergence of the Caddo culture in the region of southwestern Arkansas, northern Louisiana, southeastern Oklahoma, and eastern Texas is documented by 900 A.D. or shortly thereafter. The distinctive ceramics and specific artifacts made of stone, bone, antler, and marine shell form a line of evidence archeologically connecting historic Caddo groups with this region. Historic records and ethnographic accounts place the Caddo in this region in the 1600s. Based on the cultural material, geographic location, dates of occupation, 18th and 19th century accounts of the occupants of the area, and information gained during consultation, Little Rock District has determined that the human remains and associated funerary objects from the sites listed in this notice are culturally affiliated with the Caddo Nation of Oklahoma.

### Determinations Made by the Little Rock District

Officials of the Little Rock District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 88 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 152 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mr. Rodney Parker, District Archaeologist, U.S. Army Corps of Engineers, Little Rock District, P.O. Box 867, Little Rock AR 72203, telephone (501) 324–5752, email *rodney.d.parker@usace.army.mil* by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Caddo Nation of Oklahoma may proceed.

The Little Rock District is responsible for notifying the Caddo Nation of Oklahoma; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Quapaw Tribe of Indians; The Osage Nation (previously listed as the Osage Tribe); and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: December 5, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00752 Filed 1–15–14; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–14597; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Tennessee Valley Authority (TVA) has completed an inventory of human remains in consultation with the appropriate Federally recognized Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Federally recognized Indian tribes. Representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains to the Federally recognized Indian tribe stated in this notice may proceed.

**DATES:** Representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to TVA at the address in this notice by February 18, 2014.

**ADDRESSES:** Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of TVA. The human remains were removed from the Rudder site in Jackson County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by TVA professional staff in consultation with representatives of the University of Alabama and the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

### History and Description of the Remains

From March 13 to November 14, 1939, human remains representing, at minimum, 5 individuals were removed from the Rudder site (1JA180), in Jackson County, AL. The Rudder site was excavated as part of TVA's Guntersville reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Excavation of the land commenced after TVA had acquired this land for the Guntersville project. The excavation site was composed of a truncated trapezoidal mound with multiple construction periods and a smaller mound containing most of the burial units. This site was occupied during the

Henry Island phase of the Mississippian culture (ca. A.D. 1200–1400). Details regarding this site may be found in *An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama* by William S. Webb and Charles G. Wilder. The human remains excavated from the Rudder site have always been in the physical custody of the AMNH at the University of Alabama. The human remains include 2 adult females and 3 adult males. No known individuals were identified.

At the time of the excavation and removal of these human remains, the land from which the remains were removed was not the tribal land of any federally recognized Indian tribe. In October 2013, TVA consulted with all federally recognized Indian tribes who are recognized as aboriginal to the area from which these Native American human remains were removed. These tribes are the Cherokee Nation, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma. None of these Indian tribes agreed to accept control of the human remains. After further consultation with the parties that were a part of this overall consultation, TVA has decided to transfer control of the human remains to the Muscogee (Creek) Nation of Oklahoma.

**Determinations Made by the Tennessee Valley Authority**

Officials of TVA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their presence below, but not derived from, a large trapezoidal mound built during the Henry Island phase (AD 1200–1400).
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 5 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), TVA has decided to transfer control of the culturally unidentifiable human remains to the Muscogee (Creek) Nation.

**Additional Requestors and Disposition**

Representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Muscogee (Creek) Nation may proceed.

TVA is responsible for notifying the University of Alabama and the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 2, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00803 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14569; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: California State University, Fullerton, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The California State University, Fullerton, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the California State University, Fullerton. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the California State University, Fullerton, at the address in this notice by February 18, 2014.

**ADDRESSES:** Dr. Mitchell Avila, California State University, Fullerton, P.O. Box 6850, Fullerton, CA 92834–6850, telephone (657) 278–3528, email *mavila@Exchange.FULLERTON.EDU*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the California State University, Fullerton. The human remains and associated funerary objects were removed from Inyo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the California State University, Fullerton, professional staff in consultation with representatives of Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California); Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine

Community of the Lone Pine Reservation, California); and the Kern Valley Indian Council, a non-Federally recognized Indian group.

**History and Description of the Remains**

In 1966, human remains representing, at minimum, one individual were removed from an undesignated site in Inyo County, CA. The human remains were reportedly excavated and collected from a small cave in the vicinity of Fossil Falls in the Little Lake lava flow by Mr. W. Riffle, Mr. M. Purkiss, and two other, unnamed, individuals. The excavation and collection was not archeological. The exact burial site location is unidentifiable, but was most probably private land. The human remains were reportedly in Purkiss' possession until he donated the remains to California State University, Fullerton, in 1973. The human remains are a partial skeleton, including cranial and a few post-cranial bones, of a female, age 20–30, with significant teeth wear. No known individuals were identified. The three associated funerary objects are three small pottery fragments.

The Little Lake lava flow contains numerous archeological sites and petroglyphs which archeological investigations have identified as prehistoric in age. The three pottery fragments are archeologically consistent with the late prehistoric Intermountain Brownware pottery of the region. During consultation, Ms. Irene Button, Tribal Elder, Lone Pine Paiute-Shoshone Tribe, suggested that the pottery fragments may have been placed to cover the face of the deceased. The skeletal morphology is osteologically consistent with that of Native Americans. The teeth wear is anthropologically consistent with habitual practice of the traditional Paiute and Shoshone method of preparing plant material for basket weaving by mastication. The burial site is located within the traditional territory of the Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California) whose members are, based on oral tradition, historic, and ethnographic evidence, descendants of the prehistoric Owens Valley Paiute and Western Shoshone population of the burial site area.

**Determinations Made by the California State University, Fullerton**

Officials of the California State University, Fullerton, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Mitchell Avila, California State University, Fullerton, P.O. Box 6850, Fullerton, CA 92834–6850, telephone (657) 278–3528, email *mavila@Exchange.FULLERTON.EDU*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California) may proceed.

The California State University, Fullerton, is responsible for notifying the Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California); Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); and the Kern Valley Indian Council, a non-Federally recognized Indian group that this notice has been published.

Dated: November 25, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00750 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14599; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: State Historical Society of Wisconsin, Madison, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The State Historical Society of Wisconsin (WHS) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State Historical Society of Wisconsin. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State Historical Society of Wisconsin at the address in this notice by February 18, 2014.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email *Jennifer.Kolb@wisconsinhistory.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State Historical Society of Wisconsin, Madison, WI. The human remains and

associated funerary objects were removed from multiple sites in Dane County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the State Historical Society of Wisconsin professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin.

**History and Description of the Remains**

In 1931, human remains representing, at minimum, three individuals (1996.93.2) were removed from the Outlet Site (47–DA–0003) in Dane County, WI. Road construction cut into Mound 5 on the site, disturbing a burial. Charles E. Brown, founder of the Wisconsin Archeological Society and director of the State Historical Society, excavated the mound and discovered two more burials. All three burials were described as bundle burials. The remains were determined to be those of two adult males and one adult female. No known individuals were identified. No associated funerary objects are present.

In 1934, human remains representing, at minimum, one individual (A12808) were removed from the Outlet Site (47–DA–0003) in Dane County, WI. The remains were discovered in 1933 by the owner of the property while digging for a septic tank and were subsequently excavated by Charles E. Brown in 1934. The remains were determined to be those of an adult, possibly male. No known individuals were identified. No associated funerary objects are present.

In 1935, human remains representing, at minimum, three individuals (A12844) were removed from the Yahara Hoyt Site (47–DA–0026) in Dane County, WI. The remains were discovered in an oval mound by members of the Wisconsin Outers Association of Madison and excavated under the direction of Charles E. Brown. The remains were determined to be those of three adults—one female, one male, and one individual of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1987, human remains representing, at minimum, one individual (HP.DA–0029.1) were removed from the Koshkonong Mound Group (47–DA–0029) in Dane County, WI. The remains were disturbed during excavation for a house foundation. State Historical Society of Wisconsin staff investigated and discovered that a mound was being disturbed. The burial was discovered in backfill dirt, meaning the primary location of the burial within the mound could not be determined. The remains were determined to be those of an adult male. No known individuals were identified. No associated funerary objects are present.

In 1962, human remains representing, at minimum, two individuals (F1996.21.1 and F1996.21.2) were removed from the Olson Site (47–DA–0089) in Dane County, WI. The remains were excavated by a WHS archeological crew from two sub-floor burial pits in a partially destroyed conical mound. They were determined to be those of an adult, possibly female, and a child of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1934, human remains representing, at minimum, one individual (H13016) were removed from the Fuller Woods Mound Group (47–DA–0118) in Dane County, WI. The remains were excavated by a WHS archeological crew from a partially disturbed linear mound. The archeologists recovered numerous cranial fragments from a burial located beneath an ash pit that were determined to be from an adult of indeterminate sex. No known individuals were identified. The one associated funerary object is a partially reconstructed grit-tempered pottery vessel (1982.46.1.1-.97).

In 1935, human remains representing, at minimum, one individual (A12843 and A12843.1) were removed from the Willow Drive Mounds (47–DA–0119) in Dane County, WI. The remains were excavated from a bird effigy mound on the University of Wisconsin-Madison campus by Charles E. Brown. Three mandible fragments were loaned to the University of Wisconsin-Madison Anthropology Department at an unknown time and returned to the WHS in 2011. The remains were determined to be those of a young adult male. No known individuals were identified. The one associated funerary object is a single fragmentary coyote mandible (1950.1627).

In 1937, human remains representing, at minimum, one individual (A12957) were removed from the Willow Drive Mounds (47–DA–0119) in Dane County, WI. The remains were excavated from a linear mound on the University of Wisconsin-Madison campus by Charles E. Brown. They were determined to be those of a young adult male. No known individuals were identified. The one associated funerary object is the fragmentary remains of a red fox (1984.16).

In 1939, human remains representing, at minimum, three individuals (1996.93.4 and 1996.93.5) were removed from the Picnic Point Mound Group (47–DA–0121) in Dane County, WI. The remains were discovered and excavated by a Works Progress Administration (WPA) mound repair crew and Charles E. Brown. They were determined to be those of an adult female, an adult male, and a young adult female. No known individuals were identified. No associated funerary objects are present.

In 1973, human remains representing, at minimum 78 individuals (1986.417.1—1986.417.15) were removed from the Mendota Beach Mound Group (47–DA–0129). The remains were removed by WHS archeologist John Halsey from three conical mounds, which have since been destroyed. The remains were determined to be those of 30 subadults, 23 adult males, 11 adult females, and 14 adults of indeterminate sex. No known individuals were identified. The three associated funerary objects are a group of chert flakes (1986.417.42), a chert biface fragment (1986.417.43), and a group of faunal bones (1986.417.44).

In 1915, human remains representing, at minimum, one individual (A02522 and 2011.115.11) were removed from the Dividing Ridge Mound Group (47–DA–0145) in Dane County, WI. The remains were discovered during the destruction of a linear mound above the Pieh gravel pit on the Lake Wingra Ridge. WHS archeologist Marion Cranefield was on site when a construction worker discovered the remains and assisted in the excavation. A portion of the remains were loaned to the University of Wisconsin-Madison Anthropology Department in 1967 and returned to the WHS in 2011. They were determined to be those of an adult male. No known individuals were identified. The associated funerary object is a wood fragment (2011.115.11.1).

In 1939, human remains representing, at minimum, two individuals (A12982) were removed from the Edgewood Mound Group (47–DA–0147) in Dane County, WI. A WPA work group working to repair mounds in Madison found a human bone in a conical mound. Charles E. Brown excavated and discovered two burials in the mound floor. The remains were determined to

be those of an adult male and an adult female. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals (F2013.199.1) were removed from the Arboretum Woods site (47–DA–0152) in Dane County, WI. The remains were excavated from a conical mound in the University of Wisconsin-Madison Arboretum. They were determined to be those of an adult male and a sub-adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1922, human remains representing, at minimum, five individuals (1996.93.8) were removed from the Mendota Beach site (47–DA–0172) in Dane County, WI. The five burials were disturbed during excavation for a barn on land belonging to Magnus Swenson. Either Swenson or David Atwood donated the remains to the WHS the same year. The remains were determined to be those of five individuals—three elderly adults, one adult, and one juvenile—all of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1991, human remains representing, at minimum, one individual (HP.DA–0237.1) were removed from the Springdale Mound Group (47–DA–0237) in Dane County, WI. The WHS was notified that a proposed Wisconsin Department of Transportation frontage road was going to be constructed through an area where an Indian mound once existed, possibly disturbing any burials that could remain. Staff monitored machine-stripping of the area to look for evidence of intact burials, and a small concentration of human bone was discovered and excavated. The remains were determined to be from an adult, possibly female. No known individuals were identified. No associated funerary objects are present.

In 1929, human remains representing, at minimum, two individuals (1950.1624) were removed from the Farwell's Point Mound Group (47–DA–0255) in Dane County, WI. The remains were excavated by Charles E. Brown from a small conical mound. They were determined to be those of an adult and juvenile, both of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1952, human remains representing, at minimum, one individual (1952.339) were removed from the Farwell's Point Mound Group (47–DA–0255) in Dane County, WI. A femur fragment was discovered by WHS archeologists during the excavation of a mound adjacent to the superintendent's residence at Mendota State Hospital. The mound had been disturbed in the recent past and an attempt had been made to restore it. The femur fragment was found in the disturbed area, suggesting that the burial had been destroyed by this disturbance. It was determined that the fragment was from a young adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual (1969A.42.104–.109) were removed from the Farwell's Point Mound Group (47–DA–0255) in Dane County, WI. The remains were uncovered and donated to the WHS by Charles E. Brown. Neither sex nor age could be determined for the remains. No known individuals were identified. No associated funerary objects are present.

In 1985, human remains representing, at minimum, one individual (1987.33.3) were removed from the Morris Park Mound Group (47–DA–0267) in Dane County, WI. An excavation of the site was conducted by Victoria Dirst of the Wisconsin Department of Natural Resources, Bureau of Parks and Recreation in preparation for a road construction project. When the site was originally mapped in 1902, it contained six conical mounds, three panther effigy mounds, and two linear mounds. At the time of excavation, four of these mounds had been largely destroyed, but seven were still intact. The partially cremated remains were excavated from pit feature 3, located about 10 meters from Mound 1. The remains and associated funerary objects were given to the WHS in 1987 as part of a cooperative agreement between the Wisconsin Department of Natural Resources and the WHS. Neither sex nor age could be determined for the remains. No known individuals were identified. The one associated funerary object consists of a group of chert fragments (1987.33.3.1).

In 1928, human remains representing, at minimum, one individual (A10120) were removed from the Crystal Lake Burials and Village site (47–DA–0335) in Dane County, WI. The remains were discovered by a road crew while excavating gravel. The burial was removed and reported to Sheriff Fred Finn, who gave the remains to the WHS. The remains were determined to be those of an adult male. No known individuals were identified. No associated funerary objects are present.

In 1929, human remains representing, at minimum, three individuals (A12857) were removed from the Crystal Lake Burials and Village site (47–DA–0335) in Dane County, WI. The remains were discovered by a road crew while plowing the crest of a hill to excavate gravel. They notified the WHS of their discovery, and Charles E. Brown excavated the burials. Brown donated the remains to the WHS in 1935. The remains were determined to be those of an adult male, an adult female, and a fetus of indeterminate sex. No known individuals were identified. The associated funerary objects are a group of chert flakes and a fragmentary turtle carapace (A12857.1 and A12857.2).

In 1932, human remains representing, at minimum, two individuals (F1996.22.1) were removed from the Mendota Beach Burials site (47–DA–0382) in Dane County, WI. The burials were disturbed during road construction and were located about 300 feet from one another. One of the burials had previously been partially disturbed by digging for a flower bed on the neighboring property. William F. Wagner donated the remains to the WHS the same year. The remains were determined to be those of two adults, possibly a male and a female. No known individuals were identified. No associated funerary objects are present.

In 1954, human remains representing, at minimum, one individual (1956.9) were removed from the Mendota Hills Bird Effigy site (47–DA–0409) in Dane County, WI. The remains were discovered during the mapping and partial excavation of a bird effigy mound by WHS archeologist Warren Wittry and a group of University of Wisconsin-Madison archeology graduate students. WHS was notified of the mound by a construction company after a bulldozer partially destroyed it during construction of the Mendota Hills Subdivision. During excavation, it was determined that the site had recently been looted, but the looters had not disturbed the burial pit. The remains were determined to be those of a child of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1929, human remains representing, at minimum, one individual (F2008.42.1) were removed from the Woodward Shores Mound Group (47–DA–0530) in Dane County, WI. The remains were discovered when a bird effigy mound was dug into during construction of a home. The landowners, Dr. and Mrs. Samuel Harper, had been told to watch for burials as they dug into the mound and excavated the remains before continuing with the construction project. Three burials were found, but two of the burials were in a very poor state of preservation and were not saved by the

excavators. Mrs. Harper contacted Charles E. Brown concerning the discovery and the remains were given to the WHS. The remains were determined to be those of an adult male. No known individuals were identified. No associated funerary objects are present.

In 1986, human remains representing, at minimum, one individual (1994.113.53) were removed from the Camp Indianola site (47–DA–0533) in Dane County, WI. Archeologist Victoria Dirst discovered the burial during an excavation of the site for the Department of Natural Resources, who transferred them to the WHS as part of cooperative agreement. The remains were determined to be those of an adult female. No known individuals were identified. No associated funerary objects are present.

In 1915, human remains representing, at minimum, one individual (1950.1225) were removed from the Nichols Mortuary Site (47–DA–1284) in Dane County, WI. William McClean uncovered two burials while plowing near the Yahara River Bank at the Nichols farm. McClean donated only a lumbar vertebra with a projectile point embedded in it, and none of the other human remains, to the WHS in 1917. The projectile point was recorded at the time of donation but was not present during re-cataloging in 1950. The vertebra was determined to be from an adult. No known individuals were identified. No associated funerary objects are present.

In 1954, human remains representing, at minimum, two individuals (1956.23.1) were removed from the Nichols Mortuary Site (47–DA–1284) in Dane County, WI. The remains were excavated from Mound 2 by WHS archeologist Warren Wittry. The mound was excavated because it was being destroyed by a construction project. The remains were determined to be those of an adult female and an individual of indeterminate age and sex. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing, at minimum, one individual (HP.DA–1395.1) were removed from the Birmingham's Knee Site (47–DA–1395) in Dane County, WI. A femoral condyle fragment was discovered by then state archeologist Bob Birmingham eroding out of tree roots along the lakeshore. No other skeletal material was recovered. The bone fragment was determined to be from an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1900, human remains representing, at minimum, six individuals (A00031 and A02580.1) were removed from a gravel pit at an unknown site along Oregon Road in South Madison, Dane County, WI. Mr. Absalom Van Deusen donated the remains to the WHS that same year. The remains were loaned to the University of Wisconsin-Madison Anthropology Department in 1949 and returned to the WHS in 2011. The remains were determined to be those of three adult males, one juvenile female, and two adults of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing, at minimum, three individuals (2011.115.3) were removed from an unknown site on the west end of Mendota Beach, in Dane County, WI. The remains were discovered by the landowner, Mr. F.W. Burton, while digging a cellar for his home. Burton contacted Charles E. Brown, who excavated the remains. At an unknown date, the remains were loaned to the University of Wisconsin-Madison Anthropology Department and were returned to the WHS in 2011. The remains were determined to be those of two adult males and one adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

**Determinations Made by the State Historical Society of Wisconsin**

Officials of the State Historical Society of Wisconsin have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on WHS records, discovery location and context of burial sites, the reported presence of funerary objects in some instances, and skeletal analysis in some instances.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 132 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the ten objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Ho-Chunk Nation of Wisconsin.

**Additional Requestors and Disposition**

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email *Jennifer.Kolb@wisconsinhistory.org,* by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin may proceed.

The State Historical Society of Wisconsin is responsible for notifying the Forest County Potawatomi Community, Wisconsin; the Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin that this notice has been published.

Dated: December 2, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00781 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14649; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Denver Museum of Anthropology, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Denver Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Denver

Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Denver Museum of Anthropology at the address in this notice by February 18, 2014.

**ADDRESSES:** Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Denver Museum of Anthropology, Denver, CO. The human remains were removed from an unknown site in the Southwestern region of the United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains was made by the University of Denver Museum of Anthropology professional staff in consultation with representatives of tribes with aboriginal territory in the Southwestern region of the United States. The consultant tribes with aboriginal territory in the Southwestern region include: Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

The following tribes with aboriginal territory in the Southwestern region of the United States were also invited to participate but were not involved in consultations: Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Kewa Pueblo, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and Ysleta Del Sur Pueblo of Texas.

Hereafter, all tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

## History and Description of the Remains

At an unknown date, human remains representing, at minimum, 1 individual (DU 6065) were removed from an unknown site in the Southwestern region of the United States. They were removed by E.B. Renaud or H.B. Roberts of the University of Denver Department of Anthropology during expeditions in the Southwest between the 1920s and 1950s. The individual is identified as an adult female. No known individuals were identified. No associated funerary objects are present.

Pursuant to 43 CFR 10.16, the Secretary of the Interior may make a recommendation for a transfer of control of culturally unidentifiable human remains. On November 6, 2013, the University of Denver Museum of Anthropology requested that the Secretary, through the Native American Graves Protection and Repatriation Review Committee, recommend the proposed transfer of control of the culturally unidentifiable Native American human remains in this notice to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The Review Committee, acting pursuant to its responsibility under 25 U.S.C. 3006(c)(5), considered the request at its November 2013 meeting and recommended to the Secretary that the proposed transfer of control proceed. A December 11, 2013, letter on behalf of the Secretary of Interior from the Designated Federal Official transmitted the Secretary's independent review and concurrence with the Review Committee that:

- the University of Denver Museum of Anthropology consulted with every appropriate Indian tribe or Native Hawaiian organization,
- none of The Consulted and Notified Tribes objected to the proposed transfer of control, and
- the University of Denver Museum of Anthropology may proceed with the agreed upon transfer of control of the culturally unidentifiable human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Transfer of control is contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

## Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on inscriptions on the remains and the findings of a physical anthropologist employed by the University of Denver prior to November 1995.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.16, the disposition of the human remains will be to Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado and Ute Mountain Tribe of the Ute Mountain

Reservation, Colorado, New Mexico & Utah.

**Additional Requestors and Disposition**

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Denver, CO, telephone (303) 871–2687, email *anne.amati@du.edu*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

The University of Denver Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: December 12, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00772 Filed 1–15–14; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–14644; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Tonto National Monument, Roosevelt, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, National Park Service, Tonto National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Tonto National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Tonto National Monument at the address in this notice by February 18, 2014.

**ADDRESSES:** Duane Hubbard, Acting Superintendent, Tonto National Monument, 26260 N AZ Hwy 188, Lot 2, Roosevelt, AZ 85545, telephone (928) 467–2241, email *duane_hubbard@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Tonto National Monument, Roosevelt, AZ. The human remains were removed from Tonto National Monument, Gila County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Tonto National Monument.

**Consultation**

A detailed assessment of the human remains was made during a region-wide, multi-park process by Tonto National Monument professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of

Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

**History and Description of the Remains**

At unknown dates, human remains representing, at minimum, two individuals were removed from unknown locations in Gila County, AZ. The human remains were found in Tonto National Monument's collections storage area and so were likely removed from sites within the boundaries of Tonto National Monument. No known individuals were identified. No associated funerary objects are present.

**Determinations Made by Tonto National Monument**

Officials of Tonto National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and the known archeological context of Tonto National Monument.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico.

**Additional Requestors and Disposition**

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Duane Hubbard, Acting Superintendent, Tonto National Monument, 26260 N AZ Hwy 188, Lot 2, Roosevelt, AZ 85545, telephone (928) 467–2241, email *duane_hubbard@nps.gov*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Tonto National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: December 11, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00766 Filed 1–15–14; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14609; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Arizona State Museum, University of Arizona, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Arizona State Museum, University of Arizona. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Arizona State Museum, University of Arizona at the address in this notice by February 18, 2014.

**ADDRESSES:** John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains were removed from an unknown location in Tennessee.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Arizona State Museum professional staff in consultation with representatives of the Cherokee Nation, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama), The Chickasaw Nation, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, Thlopthloco Tribal Town, and the United Keetoowah Band of Cherokee Indians in Oklahoma.

### History and Description of the Remains

In 1997, human remains representing, at minimum, one individual were removed from a private residence in Maricopa County, AZ, by the Phoenix Police Department. It was determined that the human remains had been obtained on an unknown date from an unknown archeological site in Tennessee. It was suggested that the site was about 700 years old, but no further information is available. In 1999, the human remains were transferred from the Maricopa County Medical Examiner's Office to the Arizona State Museum. No known individuals were identified. No associated funerary objects are present.

### Determinations Made by the Arizona State Museum, University of Arizona

Officials of the Arizona State Museum, University of Arizona have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on morphological characteristics of the cranium, the condition of the remains, and the suggested antiquity of the site.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma.

### Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Arizona State Museum is responsible for notifying the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: December 3, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00778 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14687; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian

organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Burke Museum at the address in this notice by February 18, 2014.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–3849, email *plape@uw.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Burke Museum. The human remains were removed from an unknown location in Sandpoint, ID.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho); Confederated Salish and Kootenai Tribes of the Flathead Reservation; Kalispel Indian Community of the Kalispel Reservation; Kootenai Tribe of Idaho; and the Lower Pend D'Oreille Tribe of Indians, a non-Federally recognized Indian group (hereafter referred to as ''Consulted Tribes and Group'').

### History and Description of the Remains

In 1949, human remains representing, at minimum, one individual were removed from Sandpoint in Bonner County, ID. The human remains were removed by Mr. Clark Craig and donated to the Burke Museum in 1950 (Burke Accn. #3607). No known individuals were identified. No associated funerary objects are present.

### Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of Kalispel Indian Community of the Kalispel Reservation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to Kalispel Indian Community of the Kalispel Reservation.

### Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–3849, email *plape@uw.edu,* by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Kalispel Indian Community of the Kalispel Reservation may proceed.

The Burke Museum is responsible for notifying the Consulted Tribes and Group that this notice has been published.

Dated: December 16, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00770 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–14611; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The American Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the American Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the American Museum of Natural History at the address in this notice by February 18, 2014.

**ADDRESSES:** Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, email *nmurphy@amnh.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of Cayuga Nation; Delaware Tribe of Indians; Mashantucket Pequot Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut); Mohegan Indian Tribe of Connecticut; Narragansett Indian Tribe; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Shinnecock Indian Nation; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Stockbridge-Munsee Community, Wisconsin; Tuscarora Nation; and the Wampanoag Tribe of Gay Head (Aquinnah).

**History and Description of the Remains**

In 1902, human remains representing, at minimum, 15 individuals, including 1 adult female, 1 adult of unknown sex, and 13 subadults of unknown sex, were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY, during Raymond M. Harrington's excavations, sponsored by Frederick Ward Putnam and the American Museum of Natural History. No known individuals were identified. The 76 associated funerary objects are 46 ceramic sherds, 6 pieces of chipped stone, 22 pieces of non-human bone, 1 ground stone vessel fragment, and 1 turtle shell cup.

These remains have not been directly dated. Thermoluminescence dating of a cord-marked sherd associated with a wigwam floor at Sebonac yielded a date of A.D. 1405±101, but it is not clear that this sherd was associated with the human remains included in this inventory. The site falls within the Late Woodland Sebonac phase, and we thus infer that the human remains are Late Woodland in age. The Sebonac culture persisted into protohistoric and possibly post-contact period. Sebonac was located in the contact period territory of the Shinnecock Indians and the archeology and oral tradition indicates considerable continuity for the Shinnecock in this area. During consultation, Shinnecock informants pointed to oral traditions that reflect continuity in Shinnecock house structures as recently as the mid-19th century as well as similarities in subsistence practices evidenced at the Sebonac site, such as cooking shellfish in subterranean baking pits, a practice that has endured among the present-day Shinnecock.

**Determinations Made by the American Museum of Natural History**

Officials of the American Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 76 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Shinnecock Indian Nation.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, email *nmurphy@amnh.org.*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Shinnecock Indian Nation may proceed.

The American Museum of Natural History is responsible for notifying the Cayuga Nation; Delaware Tribe of Indians; Mashantucket Pequot Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut); Mohegan Indian Tribe of Connecticut; Narragansett Indian Tribe; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Shinnecock Indian Nation; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Stockbridge-Munsee Community, Wisconsin; Tuscarora Nation; and the Wampanoag Tribe of Gay Head (Aquinnah) that this notice has been published.

Dated: December 4, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00777 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14596; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Tennessee Valley Authority (TVA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Federally recognized Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Federally recognized Indian tribe. Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Federally recognized Indian tribe stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to TVA at the address in this notice by February 18, 2014.

**ADDRESSES:** Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of TVA. The human remains and associated funerary objects were removed from the Rudder site in Jackson County, AL.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by TVA professional staff in consultation with representatives of the University of Alabama and the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

**History and Description of the Remains**

From March 13 to November 14, 1939, human remains representing, at minimum, 67 individuals were removed from the Rudder site (1JA180), in Jackson County, AL. The Rudder site was excavated as part of TVA's Guntersville reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Excavation of the land commenced after TVA had acquired this land for the Guntersville project. The excavation site was composed of a truncated trapezoidal mound with multiple construction periods and a smaller mound containing most of the burial units. This site was occupied during the Henry Island phase of the Mississippian culture (ca. A.D. 1200–1400). Details regarding this site may be found in *An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama* by William S. Webb and Charles G. Wilder. The human remains and associated funerary objects excavated from the Rudder site have always been in the physical custody of the AMNH at the University of Alabama. The human remains include adults, juveniles, and infants of both sexes. No known individuals were identified. The 6,122 associated funerary objects are 3 ceramic bowls, 1 duck effigy bowl, 1 ceramic cup, 10 ceramic jars, 3 ceramic water bottles, 1 ceramic ear spool, 1,258 pottery sherds, 20 stone celts, 3 projectile points, 310 chert flakes, 1 ground sandstone object, 1 limestone discoidal, 1 stone pipe, 74 pebbles, 1 piece of galena, 4 pieces of graphite, 2 pieces of an unknown green mineral, 2 pieces of talc, 4 pieces of hematite, 23 pieces of mica, 1 limonite, 4,361 shell beads, 8 carved shell gorgets, 13 pieces of mussel shell, 4 pieces of animal bone awl, 1 copper disk, 2 wooden ear spools (one with copper layer), and 9 wood fragments.

Although there is no scientific certainty that Native Americans of the Henry Island phase are directly related to modern Federally recognized tribes, Spanish and French explorers of the 16th and 17th centuries do indicate the presence chiefdom level tribal entities in the southeastern United States. The Coosa paramount chiefdom noted in historical chronicles is the most likely entity related to Henry Island phase sites in this part of the Guntersville Reservoir. Tribal groups or towns now part of The Muscogee (Creek) Nation claim descent from the Coosa chiefdom. The preponderance of the evidence indicates that in this part of the Guntersville Reservoir area, Henry Island phase sites are most likely culturally associated with groups now part of the Muscogee (Creek) Nation.

**Determinations Made by the Tennessee Valley Authority**

Officials of TVA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 67 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 6,122 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Muscogee (Creek) Nation.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Muscogee (Creek) Nation may proceed.

TVA is responsible for notifying the University of Alabama and the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 2, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00763 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14570; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any

Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Burke Museum at the address in this notice by February 18, 2014.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Burke Museum. The human remains and associated funerary objects were removed from Grays Harbor County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Burke Museum professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation and the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington).

## History and Description of the Remains

In 1947, human remains representing, at minimum, four individuals were removed from Grays Harbor County, WA. The human remains and associated funerary objects were collected on an expedition led by Richard Daugherty, as a part of a survey of Grays Harbor County. Three of these individuals are possibly from a site designated by Daugherty as UW Site 15, which was on the Minard Ranch (45–GH–15). This site corresponds with the Native American town of Oyhut. The provenience of the fourth individual collected by Daugherty during his survey of Grays Harbor County is unknown. The human remains and funerary objects were donated to the Burke Museum in 1947 (Burke Accn. #3583). Additional human remains and associated funerary objects from this site were previously published in Notices of Inventory Completion in the **Federal Register** by Washington State University (May 17, 2007 and corrected August 21, 2008) and Central Washington University (March 16, 2012). No known individuals were identified. The seven associated funerary objects are one net weight, one net weight fragment, three flakes, and two unmodified mammal bone fragments.

In 1960, human remains representing, at minimum, one individual were removed from south of Ocean City in Grays Harbor County, WA. Michael Mattbey donated the remains to the Burke Museum in 1962 (Burke Accn. #1963–75). No known individuals were identified. No funerary objects are present.

Osteological and anthropological evidence indicates that the human remains are Native American. The Minard Ranch Site (45–GH–15) is located at or near the traditional Copalis village of Oyhut. The Copalis are a subgroup of the Lower Chehalis of Southwestern Coast Salish culture area. The Copalis speak the Quinault language, while other Lower Chehalis groups speak Lower Chehalis. The traditional territory of the Copalis encompasses the area surrounding the Copalis River and stretching southward to North Bay (Hajda 1990; Spier 1936). Archeological evidence at the site suggests the site was occupied from approximately 1,000 years before the present until the early 19th century. The Chehalis Reservation was created in 1864 for the Upper Chehalis, Cowlitz, and coastal groups south of Quinault, including the Lower Chehalis. Many Lower Chehalis chose not to be removed from their aboriginal land. Individuals of Lower Chehalis descent are also members of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington) and the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington). Today, the Lower Chehalis are represented by the Confederated Tribes of the Chehalis Reservation.

## Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Based on anthropological and biological evidence, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Chehalis Reservation.

## Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Confederated Tribes of the Chehalis Reservation may proceed.

The Burke Museum is responsible for notifying the Confederated Tribes of the Chehalis Reservation and the Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington) that this notice has been published.

Dated: November 25, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00760 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14613; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The American Museum of Natural History has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the American Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the American Museum of Natural History at the address in this notice by February 18, 2014.

**ADDRESSES:** Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, email *nmurphy@amnh.org*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the American Museum of Natural History, New York, NY. The human remains are believed to have been removed from the Missouri River region, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

#### History and Description of the Remains

On an unknown date, human remains representing, at minimum, 1 individual, were removed from what we believe to be the Missouri River region of North Dakota. The remains of one adult of unknown sex were found among the American Museum of Natural History's collections during a recent collections review. The American Museum of Natural History has no information on the circumstances of the acquisition of these remains. No known individuals were identified. No associated funerary objects are present. The individual has been identified as Native American based on museum documentation that refers to the remains as ''Arikikara Indianer.''

These remains have not been directly dated and although no information regarding the initial recovery of these remains is available, a provenience tag reading ''Arikikara Indianer Missouri'' was present. ''Arikikara'' likely represents an alternate spelling of Arikara and the mention of Missouri likely denotes the portion of the Missouri River drainage included in Sahnish (Arikara) aboriginal lands.

#### Determinations Made by the American Museum of Natural History

Officials of the American Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 1 individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, email *nmurphy@amnh.org*., by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The American Museum of Natural History is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: December 4, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00765 Filed 1–15–14; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14645; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Coconino National Forest, Flagstaff, AZ, and the Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, Coconino National Forest and the Arizona State Museum, University of Arizona, have completed an inventory of human remains, in consultation with the appropriate Indian tribes, and have determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the U.S. Department of Agriculture, Forest Service, Southwestern Region. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the U.S. Department of Agriculture, Forest Service, Southwestern Region at the address in this notice by February 18, 2014.

**ADDRESSES:** Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238, email *fwozniak@fs.fed.us*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of Agriculture, Forest Service, Southwestern Region. The human remains were removed from the Big Park Ruin in Coconino County, AZ, and a site in the Sycamore Canyon Wilderness in the vicinity of Camp Verde, Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the U.S. Department of Agriculture, Forest Service, Coconino National Forest, and the Arizona State Museum professional staffs in consultation with representatives of the Hopi Tribe of Arizona.

### History and Description of the Remains

In 1927, human remains representing, at minimum, one individual were removed from Big Park Ruin (Verde:2:1(GP)), Coconino County, AZ, during legally authorized excavations conducted by Gila Pueblo Foundation. The remains were transferred to the Arizona State Museum in early 1950s at the demise of the Gila Pueblo Foundation. No known individual was identified. There are no funerary objects associated with these remains.

In 1994, human remains representing, at minimum, one individual were found by hikers at a site in the Sycamore Canyon Wilderness near Camp Verde, Yavapai County, AZ, and subsequently removed by the Yavapai County Sheriff's Office and curated at Arizona State Museum since 1997. No known individual was identified. There are no funerary objects associated with these remains.

Big Park Ruin is a cliff dwelling located in the vicinity of the present day Oak Creek, AZ. The characteristics of material culture at this site indicate that this cliff dwelling is associated with the archeologically defined Southern Sinagua culture of north central Arizona. The material culture, architecture, and site organization indicate that the site was occupied between A.D. 1050 and 1200.

The site in the Sycamore Canyon Wilderness near Camp Verde is a prehistoric burial location. Prehistoric sites in Sycamore Canyon are associated with the archeologically defined Southern Sinagua Culture of north central Arizona. These sites were occupied between A.D. 1000 and 1200.

The Southern Sinagua culture is considered to be ancestral to the Hopi Tribe of Arizona. Oral traditions presented by representatives of the Hopi Tribe support cultural affiliation.

### Determinations Made by the U.S. Department of Agriculture, Forest Service, Southwestern Region

Officials of the U.S. Department of Agriculture, Forest Service, Southwestern Region have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238, email *fwozniak@fs.fed.us*, by February 18, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Hopi Tribe of Arizona may proceed.

The U.S. Department of Agriculture, Forest Service, Southwestern Region is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: December 12, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00793 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–14642; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Intent To Repatriate Cultural Items: The Field Museum of Natural History, Chicago, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Field Museum of Natural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Field Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Field Museum of Natural History at the address in this notice by February 18, 2014.

**ADDRESSES:** Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Field Museum of Natural History, Chicago, IL, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Item(s)**

The two cultural items are Tlingit ceremonial items collected near Juneau, AK, in the mid- to late 1800s.

In 1902, the Field Museum of Natural History (Field Museum) purchased a large collection of Tlingit cultural items from George Thornton Emmons known as the Spuhn Collection. It is unknown whether Emmons or Carl Spuhn, a manager with the Northwest Trading Company, originally acquired the two cultural items. The requested items consist of a large wooden box drum painted with the design of a wolf (Wolf Drum) and a steel, double-bladed dagger decorated with a design of a shark (Shark Dagger). Field Museum records indicate that the Wolf Drum was acquired sometime before 1900 from a Chief of the Taku Tribe who originally lived at Taku Harbor, AK, and who later moved to Gastineau Channel below Juneau. Field Museum records indicate that the Shark Dagger was acquired before 1900, and came from the Auk tribe living in Juneau, AK. The short upper blade is ornamented as a ground shark which was the totemic emblem of the family of the owner. Its eyes and teeth are embellished with Abalone shell. The dagger appears to be hafted, in part, with copper.

The cultural affiliation of the Wolf Drum is Taku Tlingit as indicated through museum records and consultation with representatives of the Central Council of the Tlingit & Haida Indian Tribes (Central Council). The Central Council has requested the Drum on behalf of the *Yanyeidi* clan of the Taku Kwan. The cultural affiliation of the Shark Dagger is Auk Tlingit as indicated by museum records and by consultation evidence provided by the Central Council. Museum records indicate that the Shark Dagger belonged to the family of a principal chief of the Auk tribe living at ''Sin-ta-ka heenee'' (Juneau). The Central Council requested the Shark Dagger on behalf of the Wooshkeetaan clan of the Auk Kwan.

The 2 cultural items have been identified as Native American sacred objects and objects of cultural patrimony through museum records, scholarly publications, primary documents, and consultation information provided by representatives of Central Council.

**Determinations Made by the Field Museum**

Officials of the Field Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org*, by February 18, 2014. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes may proceed.

The Field Museum is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes and the Douglas Indian Association.

Dated: December 9, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00798 Filed 1–15–14; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14598; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Tennessee Valley Authority, Knoxville, TN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Tennessee Valley Authority (TVA), in consultation with the appropriate Federally recognized Indian tribes has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to claim these cultural items should submit a written request to the TVA. If no additional claimants come forward, transfer of control of the cultural items to the Federally recognized Indian tribe stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to TVA at the address in this notice by February 18, 2014.

**ADDRESSES:** Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of TVA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Item(s)**

From March 13 to November 14, 1939, 205 cultural items were removed from the Rudder site (1JA180), in Jackson County, AL. The Rudder site was excavated as part of TVA's Guntersville reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Excavation of the land commenced after TVA had acquired this land for the Guntersville project. The excavation site was composed of a truncated trapezoidal mound w ith multiple construction periods and a smaller mound containing most of the burial units. This site was occupied during the Henry Island phase of the Mississippian culture (ca. A.D. 1200–1400). Details regarding this site may be found in *An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama* by William S. Webb and Charles G. Wilder. The unassociated funerary

objects excavated from the Rudder site have always been in the physical custody of the AMNH at the University of Alabama. The 205 unassociated funerary objects are comprised of 1 ceramic bowl, 2 ceramic water bottles, 199 pottery sherds, 2 pieces of graphite, and 1 sandstone pallet.

These unassociated funerary objects were recovered from six burial features. The human remains from these burial features were either not collected during excavation or have been misplaced in the last 74 years. These burial features, however, were derived from Henry Island phase strata in the mounds at this site. These unassociated funerary objects are, therefore, from Mississippian culture burials.

Although there is no scientific certainty that Native Americans of the Henry Island phase are directly related to modern Federally recognized tribes, Spanish and French explorers of the 16th and 17th centuries do indicate the presence chiefdom level tribal entities in the southeastern United States. The Coosa paramount chiefdom noted in historical chronicles is the most likely entity related to Henry Island phase sites in this part of the Guntersville Reservoir. Tribal groups or towns now part of The Muscogee (Creek) Nation claim descent from the Coosa chiefdom. The preponderance of the evidence indicates that in this part of the Guntersville Reservoir area, Henry Island phase sites are most likely culturally associated with groups now part of the Muscogee (Creek) Nation.

**Determinations Made by the Tennessee Valley Authority**

Officials of TVA have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 205 cultural items described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from the specific burial sites of a Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Muscogee (Creek) Nation.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov*, by February 18, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Muscogee (Creek) Nation may proceed.

TVA is responsible for notifying the University of Alabama and the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 2, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2014–00805 Filed 1–15–14; 8:45 am]

BILLING CODE 4312–50–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1205 (Final)]**

## Silica Bricks and Shapes From China

**Determination**

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of silica bricks and shapes, provided for in subheadings 6902.20.10 (statistical reporting number 6902.20.1020), 6902.20.50 (statistical reporting number 6902.20.5020), and 6909.19.50 (statistical reporting number 6909.19.5095) of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

**Background**

The Commission instituted this investigation effective November 15, 2012, following receipt of a petition filed with the Commission and Commerce by Utah Refractories Corp., Lehi, UT. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of silica bricks and shapes from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 30, 2013 (78 FR 45968). The hearing was held in Washington, DC, on November 21, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 9, 2014. The views of the Commission are contained in USITC Publication 4443 (January 2014), entitled *Silica Bricks and Shapes from China: Investigation No. 731–TA–1205 (Final).*

Issued: January 10, 2014.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014–00702 Filed 1–15–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–415 and 731–TA–933 and 934 (Second Review)]**

## Polyethylene Terephthalate Film, Sheet, and Strip From India and Taiwan; Scheduling of Full Five-Year Reviews Concerning the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip (''PET Film'') From India and the Antidumping Duty Orders on PET Film From India and Taiwan

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on PET film from India and/or revocation of the antidumping duty orders on PET film from India and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* January 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.* On July 5, 2013, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (78 FR 42105, July 15, 2013). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the review and public service list.* Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.* The prehearing staff report in the reviews will be placed in the nonpublic record on May 2, 2014, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.* The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 20, 2014, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 14, 2014, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.* Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 12, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 29, 2014. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 29, 2014. On June 18, 2014, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 20, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Dated: Issued: January 13, 2014.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014–00728 Filed 1–15–14; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Heraeus Electro-Nite Co., LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Heraeus Electro-Nite Co., LLC*, Civil Action No. 1:14–cv–00005. On January 2, 2014, the United States filed a Complaint alleging that the September 7, 2012 acquisition by Heraeus Electro-Nite Co., LLC (''Heraeus'') of substantially all of the assets of Midwest Instrument Company, Inc. (''Minco'') violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Heraeus to divest a package of assets, including the former Minco facilities located in Hartland, Wisconsin and Johnson City, Tennessee, along with associated tangible and intangible assets. The proposed Final Judgment also requires Heraeus to waive any existing noncompete agreement that may bind any former employee of Heraeus or Minco in the United States.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the U.S. Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, (telephone: 202–307–0924).

**Patricia A. Brink,**

*Director of Operations.*

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

Plaintiff,

v.

HERAEUS ELECTRO-NITE CO., LLC
One Summit Square, Suite 100
Langhorne, PA 19047

Defendant.

CASE NO: 1:14-cv-00005
JUDGE: James Boasberg
FILED: 01/02/2014

**COMPLAINT**

The United States of America, acting under the Attorney General of the United States, brings this civil antitrust action seeking equitable relief to remedy the actual and potential anticompetitive effects of the September 2012 acquisition by Defendant Heraeus Electro-Nite Co., LLC (''Heraeus'') of substantially all of the assets of Midwest Instrument Company, Inc. (''Minco''). The United States alleges as follows:

**I. INTRODUCTION**

1. In 2012, Defendant Heraeus surveyed the U.S. market for single-use sensors and instruments used to measure and monitor the temperature and chemical composition of molten steel (''S&I'') and found that its once-commanding 85% market share had been reduced to an estimated 60%, while its closest competitor, Minco, had gained substantially, reaching about a 35% share. Consequently, Heraeus decided to restore its ''market leadership'' in the United States by acquiring Minco and thereby eliminating Minco's production capacity. The acquisition removed significant head-to-head competition between Minco and Heraeus on price, innovation and service, and created a near-monopoly in the supply of S&I in the United States. Accordingly, Heraeus' acquisition of Minco's assets was unlawful and violated Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Nearly 100 million tons of steel were produced in the United States in 2012. Steelmaking is a continuous process during which the chemistry and temperature of each batch of steel must be measured and monitored in order to ensure the quality, reliability, and consistency of the finished steel, as well as the safety and efficiency of the manufacturing operation. S&I products are integral to the steel making process; indeed, steel makers cannot produce steel without using the S&I that is developed, produced and sold by companies such as Heraeus and, previously, Minco. Steel companies also rely on S&I suppliers as virtual partners in the steel-making process.

3. Heraeus became the dominant S&I supplier in the United States after it acquired its main rival, Leeds & Northrup (''L&N''), in 1995.

4. Until the mid-1990s, Minco was a small company that supplied low-end equipment to steel mill chemistry labs. Heraeus' acquisition of L&N left steel mill customers looking for alternatives. As a result, Minco made a strategic decision to enter the high-tech, higher-end of the market and offer customers an alternative to Heraeus. Over a period of years, Minco slowly gained market share by offering superior customer service and innovation. In 2010, as the steel industry recovered from the economic downturn, Minco sales increased significantly when it introduced user-friendly, innovative products, such as a combination 3-in-1 sensor and a wireless transmitter. By 2012, Minco's market share had increased to 35%, while Heraeus' market share had decreased to about 60%.

5. Given the competitive threat presented by Minco, Heraeus' parent company determined in July 2012 that that the acquisition of Minco presented the ''[o]pportunity to improve and defend [Heraeus'] position in the North American market.''

6. Accordingly, Heraeus acquired substantially all of Minco's assets on September 7, 2012. The transaction was not reportable under the filing thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and therefore was not subject to antitrust review prior to being consummated. Instead, the transaction was brought to the attention of the United States Department of Justice after the fact by customers concerned that the acquisition of Minco by Heraeus substantially lessened competition in the S&I market in the United States.

**II. PARTIES TO THE TRANSACTION**

7. Defendant Heraeus, a Delaware corporation with its headquarters in Langhorne, Pennsylvania, is a subsidiary of Heraeus Electro-Nite International N.V. (''HEN''), a Belgian company, which itself is a subsidiary of Heraeus Holding GmbH, a privately held German corporation based in Hanau, Germany. HEN's U.S. subsidiary Heraeus had approximately $92 million in revenue in fiscal year 2011.

8. Prior to being acquired by Heraeus, Minco was a privately held company headquartered in Hartland, Wisconsin that sold S&I. In 2011, Minco's U.S. revenues were approximately $29 million. Minco's manufacturing facilities were located in Hartland, Wisconsin, Johnson City, Tennessee and Monterrey, Mexico.

9. On September 7, 2012, Heraeus and Minco completed a $42 million asset sale whereby Heraeus acquired all of Minco's business engaged in the development, production, sale, and service of S&I in the United States and certain other countries, including Canada, Brazil and Australia.

**III. JURISDICTION AND VENUE**

10. The United States brings this action against Defendant Heraeus under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Heraeus from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

11. Heraeus sells S&I in the flow of interstate commerce, and its development, production, sale, and service of S&I substantially affects interstate commerce. This Court has subject matter jurisdiction over this action and over Heraeus pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, 28 U.S.C. §§ 1331 and 1337(a) and 1345.

12. Heraeus has consented to personal jurisdiction and venue in this District.

## IV. TRADE AND COMMERCE

### A. Background: The Critical Role of S&I in U.S. Steel Production

13. The temperature and chemical composition of molten steel must be measured and monitored throughout the steel-making process. Each stage of production has specific chemical concentration and temperature requirements. The accuracy, reproducibility and reliability of molten steel temperature measurements and chemical properties directly influence the quality of the end product, as well as the safety and productivity of the steel mill. As the finished steel product may be used in demanding applications, such as steel beams for a building or automotive exterior panels, steel mills must ensure the molten steel exactly meets the required specifications. Testing and sampling the molten steel to ensure that it meets these specifications is a critical aspect of the steel-making process. S&I systems play a vitally important role in this essential aspect of the steel-making process.

14. An S&I system consists of four basic parts: (1) The single-use sensor; (2) the cardboard tube; (3) the pole; and (4) the instrument, or display. The single-use sensor, typically encased in heavy paper or cardboard and attached to a cardboard tube, contains the actual measurement device. The cardboard encasement provides momentary protection to allow the single-use sensor to transmit a reading to the instrument before the heat from the molten steel consumes the sensor. For standard single-use sensors, the cardboard tube is attached to a long, hollow metal pole that allows a steel mill worker safely to dip the sensor into the liquid steel to obtain the desired measurement. The instrument is a specialized electronic component or computer that interprets the signal from the single-use sensor and displays the temperature or chemical content measurement on a display screen or print-out. Unlike the single-use sensor, which is consumed by the molten steel, the instrument is a long-lived component that can be used for years.

15. S&I are used to monitor temperature, oxygen content, steel and slag chemistry, hydrogen concentration and the carbon content of molten steel and are differentiated primarily by the type of sensor used. A particular steel mill may utilize one type or multiple types of S&I during a particular batch, depending upon its proprietary steel-making process and the specifications of the steel's end use. The three main categories of S&I used by steel mills are thermocouples, sensors and samplers, though ''combination'' sensors are designed to conduct two or more tests at once.

a. *Thermocouples.* Thermocouples measure the temperature of molten steel in the furnace and in other stages of steel processing.

b. *Sensors.* Sensors measure the dissolved oxygen, carbon, hydrogen, or other elements present in molten steel. Oxygen and carbon sensors are used in most steel-making processes, while hydrogen sensors typically are needed to produce high-purity, high-grade steel. Each type of sensor has a distinct design.

c. *Samplers.* Samplers are used during the steel-making process to withdraw a sample of molten steel for analysis outside of the molten bath. While most samplers do not contain internal electronics, they can be manufactured as a combination unit that includes a thermocouple or a type of sensor.

16. Although single-use sensors appear to be simple, each one consists of tiny platinum wires and specialized electronic controls. The lowest-priced single-use sensors may be one to two dollars per unit, while higher-end single-use sensors may be priced at ten to twenty dollars per unit.

17. The high temperature and harsh environment of the furnace necessitates the use of S&I capable of reliable, accurate measurement in extreme conditions. Temperatures in the furnace can approach or exceed 3,000 degrees Fahrenheit, and a variation of only 20 to 30 degrees can critically affect the quality and properties of the final steel product. Failure of a single-use sensor can have catastrophic results. For example, if the molten steel overheats, the steel can melt through the vessel or ''break-out,'' which is extremely dangerous and costly. Similarly, if the molten steel cools too quickly, or has the wrong chemical composition, it may slow or stall the production process and/or produce low-quality steel. The failure of a single-use sensor can thus potentially cost a steel mill hundreds of thousands of dollars whenever the steel fails to meet the desired physical characteristics and specifications.

18. Single-use sensors are the consumable component of the S&I system. Because single-use sensors are used continuously in the steel-making process, steel mills can use hundreds of units daily and up to millions of units annually. S&I suppliers must therefore be capable of producing thousands of these high-precision, high-reliability products daily at a very low cost.

### B. S&I Is a Relevant Product Market

19. Within the broad category of S&I, each type of single-use sensor performs a distinct function and cannot be substituted for another type of sensor or a different type of measuring device. For example, a hydrogen sensor cannot detect temperature and a thermocouple does not detect hydrogen. Accordingly, single-use sensors are not interchangeable or substitutable for one another. There is separate demand for thermocouples, oxygen sensors, carbon sensors, hydrogen sensors, and other sensors. In the event of a small but significant price increase for a given type of single-use sensor, customers would not stop using that sensor in sufficient numbers so as to defeat the price increase. Thus, each type of S&I is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

20. Each steel-making customer purchases a different mix of S&I to suit the specific needs of its steel mill, steel-making process, and application. Prior to the acquisition, Minco and Heraeus produced a full range of S&I and were, by far, the two producers with the largest market shares for each individual product. Minco and Heraeus competed across the full product line of S&I and typically provided customers with a mix of various single-use thermocouples, sensors and samplers. Although numerous narrower product markets also may be defined, the competitive dynamic for each individual single-use thermocouple, sensor and sampler is nearly identical. Therefore, these products can all be aggregated for analytical convenience into a single relevant product market for the purpose of assigning market shares and evaluating the competitive impact of the acquisition. Accordingly, the development, production, sale and service of S&I is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

### C. The United States Is a Relevant Geographic Market

21. The United States is a relevant geographic market because suppliers of S&I cannot make sales in the United States without having a U.S. service and sales network and U.S. manufacturing presence. The consumable portion of S&I consists of a single-use sensor and a cardboard tube. A single-use sensor is small and light and can be shipped economically from overseas. However, the cardboard tubes for S&I can be four to eight feet long and are mostly air. They have a low value-to-volume ratio, so they cannot be shipped from overseas economically. For this reason, Heraeus, Minco and the one other existing U.S. competitor manufacture finished S&I in the United States.

22. Steel manufacturers can use up to hundreds of single-use sensors each day. The steel manufacturers are staffed leanly and do not employ in-house technicians or engineers to service S&I. A defective single-use sensor or malfunctioning instrument can shut down an entire steel line, so the steel manufacturers rely on the S&I suppliers to provide on-site technical service and support that is on call at all times. Heraeus and Minco have provided experienced service technicians and product engineers on-site to assist with inventory management, trouble-shooting, calibration, and other critical services. These service technicians and product engineers routinely visit a busy mill multiple times per week and often increase the number of their visits when the mill is implementing a new process or is having trouble with a particular S&I. These service technicians also make service calls in the middle of the night to fix a problem that has shut down a line. Service and technical support have been critical to the success of Heraeus and Minco in selling S&I in the United States.

23. Given that (1) it is uneconomic to ship fully assembled S&I from overseas to the

United States and (2) U.S. customers require extensive on-site service, customers would not switch to producers outside the United States to defeat a small but significant price increase. Accordingly, the United States is a relevant geographic market for the development, production, sale and service of S&I within the meaning of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

## V. HERAEUS' ACQUISITION OF MINCO IS ANTICOMPETITIVE

### A. The Acquisition Increased Concentration in a Highly Concentrated Market

24. Heraeus' acquisition of Minco greatly increased the already high level of concentration in the S&I market in the United States. Concentration in relevant markets typically is measured by the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A). The more concentrated a market, and the more a transaction would increase concentration in a market, the greater the likelihood that the transaction will result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2500 points are considered highly concentrated, and an increase in concentration by 150 points or more is considered significant. *See* Appendix A.

25. Prior to the acquisition, Heraeus had a 60% market share, Minco had a 35% market share and a third firm had the remaining 5% market share. The pre-acquisition HHI was 4850, and the post-acquisition HHI is 9050, an increase of 4200. The pre- and post-acquisition market concentration measures demonstrate that Heraeus' acquisition of Minco is presumptively anticompetitive.

### B. The Acquisition Has Eliminated Head-to-Head Competition Between Heraeus and Minco

26. Prior to the acquisition, U.S. customers could turn to Minco as a viable alternative source of S&I, which forced Heraeus to compete with Minco on price, service and innovation. Customers benefitted from this robust competition between Heraeus and Minco.

27. Heraeus became the dominant supplier in the United States by acquiring its competitor L&N in 1995. Around 2000, Heraeus owned 85% of the S&I market in the United States.

28. In or about 1994, Minco decided to build its own research furnace to facilitate its product development. In 2000, after several years of development, Minco began introducing high-tech products in order to compete against Heraeus. Over the next several years, Minco began selling an oxygen sensor, a hydrogen sensor and a modern instrument based on the familiar Microsoft Windows software. Minco's ''Big 3'' product innovations helped it to gain acceptance with steel mill customers that produce higher grades of steel. Minco expressly marketed itself to customers as a service-oriented, high-quality alternative to the dominant Heraeus and dedicated significant effort and resources toward meeting this standard. During the 2000s, Minco chipped away at Heraeus' share by competing on price, service and technology.

29. After slowly gaining market share throughout the 2000s, Minco broke through in 2010 when it introduced two more innovations that significantly raised its profile and threatened what Heraeus called its market ''leadership.'' First, Minco introduced its combination 3-in-1 sensor head, which both increased plant efficiency and reduced the risk to steel mill workers by reducing the number of necessary measurements.

30. Second, Minco introduced its wireless transmitter, which sends the sensor's signal from the pole to the instrument. Customers viewed this technology as a ''game-changer'' because it eliminated a cable dragging along the floor of the steel-making facility. This innovation enhanced worker safety by eliminating a tripping hazard, and it also saved customers money because the long cables need to be replaced frequently.

31. Prior to the acquisition, Minco and Heraeus competed head-to-head on price. Post-acquisition, Heraeus' steel mill customers are vulnerable to price increases because of the critical function of S&I and their small cost relative to the value of the finished steel product. The lowest-priced single-use sensors may be one to two dollars per unit, while higher-end single-use sensors can be ten to twenty dollars per unit. Only a few dollars worth of single-use sensors are used in each batch of steel, which makes numerous tons of steel that sell for about $600 per ton at current prices. As a result, the per-ton cost of single-use sensors is measured in fractions of a percent of the sales price of finished steel. Moreover, because the process of making steel costs thousands of dollars per minute, any interruption of the steel-making process caused by a defective single-use sensor can be extremely costly.

32. Prior to the acquisition, Minco and Heraeus also competed to provide a high level of service to steel mills. Each company had service representatives that would visit the mills multiple times each week, sometimes daily at the largest mills, to repair equipment, perform routine maintenance, and train mill employees. Post-acquisition, Heraeus has the incentive to impose on customers less favorable terms of service than those that were provided before the acquisition. Thus, the acquisition likely has led to deterioration of service, longer delivery times and less certain delivery, which have imposed significant risks and delays on the U.S. steel industry. Indeed, Heraeus began cutting its marketing and service staff immediately after the acquisition.

33. Prior to the acquisition, Heraeus monitored Minco's innovative efforts and attempted to match or exceed Minco's offerings. Post-acquisition, Heraeus has less incentive to continue its research and development efforts on new and innovative product offerings.

34. The elimination of Minco as an independent and strong competitor likely will lead to higher prices, reduced service, and less innovation. Through its acquisition of the Minco assets, Heraeus has substantially lessened competition in the U.S. market for the development, production, sale and service of S&I, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

### C. The Anticompetitive Effects of the Acquisition Will Not Be Counteracted by Entry or Expansion.

35. Entry and/or expansion into the development, production, sale and service of S&I will not be timely, likely or sufficient to counteract the anticompetitive effects of Heraeus' acquisition of Minco. The development, production, sale and servicing of S&I requires highly specialized know-how, specialized equipment, a full-line of S&I products, a U.S. production facility, and a U.S.-based sales and service network.

36. The machinery used to manufacture S&I is highly specialized to meet exacting mass production requirements. For example, it took one S&I supplier two years of engineering time to develop a customized machine that could mass produce reliable and accurate single-use oxygen sensors. Thus, entry by producers of other types of measurement devices will not be likely, timely or sufficient.

37. S&I suppliers currently outside the United States cannot sell into the United States because it is uneconomic to transport fully assembled S&I into the United States and because they do not have a U.S. sales and service network, which is a prerequisite to selling to U.S. customers. The development of a U.S. production/assembly facility and, even more importantly, a dependable sales and service network often can take a significant period during which the potential entrant is not making sales. U.S-based customers will not purchase S&I from a foreign supplier that does not maintain a dependable sales/support network that can provide on-call service for its S&I products.

38. Establishing a reputation for successful performance and gaining customer confidence in a specific firm's S&I are also significant barriers to expansion and/or entry. Establishing a reputation for dependable, accurate supply and service is critical to success in the S&I market. A track record and reputation for reliability must be earned over years.

## VI. VIOLATION ALLEGED

### Violation of Clayton Act Section 7, 15 U.S.C. § 18

39. The United States incorporates the allegations of paragraphs 1 through 38 above as if set forth fully herein.

40. Heraeus' acquisition of the assets of Minco is likely to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

41. The transaction has had or will have the following effects, among others:

a. Competition between Heraeus and Minco in the development, production, sale and service of S&I in the United States has been eliminated;

b. Heraeus has significantly reduced incentives to discount prices, increase the quality of its services, or invest in innovation;

c. Prices for S&I will likely increase above levels that would have prevailed absent the transaction, leading steel mills and other customers to pay higher prices for S&I for molten steel; and

d. Innovation will likely decrease, delivery times likely will lengthen, and the

quality and terms of service likely will become less favorable than those that would have prevailed absent the transaction.

**VII. REQUEST FOR RELIEF**

42. The United States requests that this Court:

a. Adjudge and decree the acquisition by defendant Heraeus of the assets of Minco to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Compel Heraeus to divest all of Minco's tangible and intangible assets related to the development, production, sale and service of S&I and to take any further actions necessary to restore the market to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of the dissipation of Minco's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective final relief;

d. Award the United States the cost of this action; and

e. Grant the United States such other further relief as the case requires and the Court deems just and proper.

Respectfully submitted,

DATE: January 2, 2014
FOR PLAINTIFF UNITED STATES

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**APPENDIX A**

**HERFINDAHL–HIRSCHMAN INDEX CALCULATIONS**

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 12,500 points are considered to be moderately concentrated and those in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. *See id.*

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, Plaintiff,

v.

HERAEUS ELECTRO–NITE CO., LLC,

Defendant.

CASE NO: 1:14-cv-00005
JUDGE: James Boasberg
FILED: 01/02/2014

**COMPETITIVE IMPACT STATEMENT**

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THE PROCEEDING**

On September 7, 2012, defendant Heraeus Electro-Nite Co., LLC (''Heraeus'') acquired substantially all of the assets of Midwest Instrument Company, Inc. (''Minco''). After investigating the competitive impact of that acquisition, the United States filed a civil antitrust Complaint on January 2, 2014, seeking an order compelling Heraeus to divest certain assets and other relief to restore competition. The Complaint alleges that the acquisition substantially lessened competition in the U.S. market for the development, production, sale and service of single-use sensors and instruments used to measure and monitor the temperature and chemical composition of molten steel (''S&I''), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As a result of the acquisition, prices for these products did or would have increased, delivery times would have lengthened, and terms of service would have become less favorable.

Concurrent with the filing of this Competitive Impact Statement, the United States and Heraeus have filed an Asset Preservation Stipulation and Order and a proposed Final Judgment. These filings are designed to eliminate the anticompetitive effects of Heraeus' acquisition of Minco. The proposed Final Judgment, which is explained more fully below, requires Heraeus, among other things, to divest the assets that it acquired from Minco that are located in the United States and Mexico.

The United States and Heraeus have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION**

A. Heraeus and the Minco Acquisition

Defendant Heraeus, a Delaware corporation with its headquarters in Langhorne, Pennsylvania, is a subsidiary of Heraeus Electro-Nite International N.V. (''HEN''), a Belgian company, which itself is a subsidiary of Heraeus Holding GmbH, a privately held German corporation based in Hanau, Germany. HEN's U.S. subsidiary, Heraeus, had approximately $92 million in revenue in fiscal year 2011.

Minco was a privately held company headquartered in Hartland, Wisconsin that also sold S&I. In 2011, Minco's U.S. revenues were approximately $29 million. Minco's manufacturing facilities were located in Hartland, Wisconsin, Johnson City, Tennessee and Monterrey, Mexico.

On September 7, 2012, Heraeus acquired substantially all of the assets of Minco. The transaction was not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''), which requires companies to notify and provide information to the Department of Justice and the Federal Trade Commission before consummating certain acquisitions. As a result, the Department of Justice did not learn of the transaction until after it had been consummated.

B. The Competitive Effects of the Acquisition on the Market for S&I

1. Industry Background

S&I products are integral to the steel-making process. Steel makers cannot produce steel without using S&I such as those developed, produced and sold by Heraeus and, formerly, by Minco. Steel making is a continuous process, in which the chemistry and temperature of each batch of steel must be measured and monitored in order to ensure the quality, reliability, and consistency of the finished steel, as well as the safety and efficiency of the manufacturing operation. S&I are used to measure and monitor the temperature and chemical composition of the molten steel. Steel companies rely on S&I; moreover, they rely on S&I suppliers as virtual partners in the steel-making process.

The temperature and chemical composition of molten steel must be measured and monitored throughout the steel-making process, and each stage of production has specific chemical concentration and temperature requirements. The accuracy, reproducibility and reliability of the measurement of molten steel temperature and chemical properties directly

influence the quality of the end product, as well as the safety and productivity of the steel mill. Because the finished steel product may be used in demanding applications, such as steel beams for a building or automotive exterior panels, steel mills must ensure the molten steel exactly meets the required specifications. Testing and sampling the molten steel to ensure that it meets these specifications is a critical aspect of the steel-making process.

An S&I system consists of four basic parts: (1) The single-use sensor; (2) the cardboard tube; (3) the pole; and (4) the instrument, or display. The single-use sensor, typically encased in heavy paper or cardboard and attached to a cardboard tube, contains the actual measurement device. The cardboard encasement provides momentary protection to allow the single-use sensor to transmit a reading to the instrument before the heat from the molten steel consumes the sensor. For standard single-use sensors, the cardboard tube is attached to a long, hollow metal pole that allows a steel mill worker safely to dip the sensor into the liquid steel to obtain the desired measurement. The instrument is a specialized electronic component or computer that interprets the signal from the single-use sensor and displays the temperature or chemical content measurement on a display screen or print-out. Unlike the single-use sensor, which is consumed in molten steel, the instrument is a long-lived component that can be used for years. S&I are used to monitor temperature, oxygen content, steel and slag chemistry, hydrogen concentration and the carbon content of molten steel and are differentiated primarily by the type of sensor used. A particular steel mill may utilize one type or multiple types of S&I during a particular batch depending upon its proprietary steel-making process and the specifications of the steel's end use. The three main categories of S&I used by steel mills are thermocouples, sensors and samplers, though ''combination'' single-use sensors are designed to conduct two or more tests at once. Thermocouples measure the temperature of molten steel in the furnace and in other stages of steel processing. Sensors measure the dissolved oxygen, carbon, hydrogen, or other elements present in molten steel. Oxygen and carbon sensors are used in most steel-making processes, while hydrogen sensors typically are needed to produce high-purity, high-grade steel. Each type of sensor has a distinct design. Samplers are used during the steel-making process to withdraw a sample of molten steel for analysis outside of the molten bath. While most samplers do not contain internal electronics, they can be manufactured as a combination unit that includes a thermocouple or a type of sensor.

Although single-use sensors appear to be simple, each one consists of tiny platinum wires and specialized electronic controls. The lowest-priced single-use sensors may be one to two dollars per unit, while higher-end single-use sensors may be priced at ten to twenty dollars per unit. Because single-use sensors are used continuously in the steel-making process, steel mills can use hundreds of units daily and up to millions of units annually. S&I suppliers must therefore be capable of producing thousands of these high-precision, high-reliability products daily at a very low cost.

The high temperature and harsh environment of the furnace necessitates the use of S&I capable of reliable, accurate measurement in extreme conditions. Temperatures in the furnace can approach or exceed 3,000 degrees Fahrenheit, and variation of only 20 to 30 degrees can critically affect the quality and properties of the final steel product. Failure of a single-use sensor can have catastrophic results. For example, if the molten steel overheats, the steel can melt through the vessel or ''break-out,'' which is extremely dangerous and costly. Similarly, if the molten steel cools too quickly, or has the wrong chemical composition, it may slow or stall the production process and/or produce low-quality steel. The failure of a single-use sensor may cost a steel mill hundreds of thousands of dollars, if the steel fails to meet the desired physical characteristics and specifications.

2. Product Market

Within the broad category of S&I, each type of single-use sensor performs a distinct function and cannot be substituted for another type of sensor or a different type of measuring device. For example, a hydrogen sensor cannot detect temperature and a thermocouple does not detect hydrogen. Accordingly, they are not interchangeable or substitutable for one another. There is separate demand for thermocouples, oxygen sensors, carbon sensors, hydrogen sensors, and other sensors. In the event of a small but significant price increase for a given type of single-use sensor, customers would not stop using that sensor in sufficient numbers so as to defeat the price increase. Thus, each type of S&I is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Each steel-making customer purchases a different mix of S&I to suit the needs of the customer's steel mill, steel-making process, and application. Prior to the acquisition, Minco and Heraeus produced a full range of S&I and were, by far, the two producers with the largest market shares for each individual product. Minco and Heraeus competed across the full product line of S&I and typically provided customers with a mix of various single-use thermocouples, sensors and samplers. Although numerous narrower product markets also may be defined, the competitive dynamic for each individual single-use thermocouple, sensor and sampler is nearly identical. Therefore, they all may be aggregated for analytical convenience into a single relevant product market for the purpose of assigning market shares and evaluating the competitive impact of the acquisition. Accordingly, the development, production, sale and service of S&I is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

3. Geographic Market

The United States is a relevant geographic market because suppliers of S&I cannot make sales in the United States without having a U.S. service and sales network and U.S. manufacturing presence. The consumable portion of S&I consists of a single-use sensor and a cardboard tube. A single-use sensor is small and light and can be shipped economically from overseas. However, the cardboard tubes for S&I can be four to eight feet long and are mostly air. They have a low value-to-volume ratio, so they cannot be shipped from overseas economically. For this reason, Heraeus and Minco both manufactured finished S&I in the United States.

Steel manufacturers can use up to hundreds of single-use sensors each day. The steel manufacturers are staffed leanly and do not employ in-house technicians or engineers to service S&I. A defective single-use sensor or malfunctioning instrument can shut down an entire steel line, so the steel manufacturers rely on the S&I suppliers to provide on-site technical service and support that is on call at all times. Heraeus and Minco have provided experienced service technicians and product engineers on-site to assist with inventory management, trouble-shooting, calibration, and other critical services. These service technicians and product engineers may visit a busy mill once or twice a week or more on a routine basis, and more frequently if the mill is implementing a new process, or is having trouble with a particular S&I. They also make service calls in the middle of the night to fix a problem that has shut down a line. Service and technical support have been critical to the success of Heraeus and Minco in selling S&I in the United States.

Because it is uneconomic to ship fully assembled S&I from overseas to the United States and U.S. customers require extensive on-site service, customers would not switch to producers outside the United States to defeat a small but significant price increase. Accordingly, the United States is a relevant geographic market for the development, production, sale and service of S&I within the meaning of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. Anticompetitive Effects

Heraeus' acquisition of Minco has increased concentration in a highly concentrated market. Concentration in relevant markets typically is measured by the Herfindahl-Hirschman Index (''HHI''), which is defined and explained in Appendix A to the Complaint. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is in excess of 2500 points are considered highly concentrated, and an increase in concentration by 150 points or more is considered significant.

Prior to the acquisition, Heraeus had a 60% market share, Minco had a 35% market share and a small third firm had the remaining five percent. Thus, the pre-acquisition HHI was 4850, and the post-acquisition HHI is 9050, an increase of 4200. Based on the pre- and post-acquisition market concentration measures, the acquisition is presumptively anticompetitive.

Prior to the acquisition, Minco was the best alternative source to Heraeus for S&I, and

customers benefited from robust competition between the firms on price, service and innovation. By 2000, Heraeus owned 85% of the market. At the same time, after several years of development, Minco began introducing high-tech products in order to compete against Heraeus. Minco expressly marketed itself to customers as a service-oriented, high-quality alternative to the dominant Heraeus and dedicated significant effort and resources toward meeting this standard. During the 2000s, Minco chipped away at Heraeus' share and customers benefited from the head-to-head competition between Heraeus and Minco on price, service, technology, and innovation. Through its acquisition of the Minco assets, Heraeus has substantially lessened competition in the U.S. market for the development, production, sale and service of S&I for molten steel, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Entry and/or expansion into the development, production, sale and service of S&I will not be timely, likely or sufficient to counteract the anticompetitive effects of Heraeus' acquisition of Minco. The development, production, sale and servicing of S&I requires highly specialized know-how, specialized equipment, a full-line of S&I products, a U.S. production facility, and a U.S.-based sales and service network. S&I suppliers currently outside the United States cannot sell into the United States because it is uneconomic to transport fully assembled S&I into the United States and they do not have a U.S. sales and service network, which is a prerequisite to selling to U.S. customers. Development of a U.S. production/assembly facility, and even more importantly, development of a dependable sales and service network can take a long time, during which the potential entrant is not making sales. U.S.-based customers will not purchase S&I from a foreign supplier that does not maintain a dependable sales and support network that can provide on-call service for its S&I products.

Establishing a reputation for successful performance and gaining customer confidence in a specific firm's S&I are also significant barriers to expansion. Establishing a reputation for dependable, accurate supply and service is critical to success in the market. A track record and reputation for reliability must be earned over years. Entry in the development, production, sale, and service of S&I in the United States would not be timely, likely, or sufficient to counteract the anticompetitive effects of Heraeus' acquisition of Minco.

## III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

### A. Divestiture Assets

The United States opened its investigation of the transaction in December 2012, three months after the transaction was consummated. Heraeus had by then integrated the former Minco assets into Heraeus' S&I business, including terminating certain supply contracts and closing foreign production facilities. The United States therefore designed the partial divestiture required by the proposed Final Judgment to facilitate entry of a new firm or expansion of an existing competitor in the S&I industry by providing that firm with market-specific assets needed for successful competition.

The proposed Final Judgment directs Heraeus to sell a package of assets in the United States and Mexico, including the former Minco facilities located in Hartland, Wisconsin and Johnson City, Tennessee, along with tangible and intangible assets associated with those facilities (the ''Divestiture Assets''). Heraeus is required to sell the Divestiture Assets to a qualified Acquirer that has the intention and ability to compete in the development, production, sale, and service of S&I in the United States. Thus, the divestiture provisions of the proposed Final Judgment are designed to make available to an Acquirer all of the remaining Minco assets acquired by Heraeus for the purpose of remedying the competitive harm from the acquisition. Under the proposed Final Judgment, however, the Acquirer, at its option, and with the consent of the United States, may elect to acquire less than the entire package of assets.

### B. Identification of an Upfront Buyer

The goal of the proposed Final Judgment is to restore the competition in the development, production, sale, and service of S&I that was lost as a result of the transaction. The United States favors the divestiture of an existing business unit that has the necessary experience to compete in the relevant market. In this case, however, the divestiture of an existing, intact business is impossible because of the integration of assets undertaken by Heraeus. Under these circumstances, the United States may consider the divestiture of less than an existing business and may identify and approve an Acquirer at the outset to ensure that the sale of the assets will create a viable entity that will restore effective competition.[1]

In the proposed Final Judgment, the designated Acquirer of the Divestiture Assets is a new entrant, Keystone Sensors LLC, (''Keystone''), which was formed in May 2013 for the purpose of entering the U.S. market for S&I to provide an alternative to Heraeus. The founders have significant experience in the S&I industry and bring together experience in the U.S. market, as well as an innovative technology concept. Initially, Keystone had intended to enter the market with a limited portfolio of high-technology products and build sales incrementally. Through the purchase of the Divestiture Assets, Keystone will be able to enter the market more rapidly and compete more effectively with Heraeus and the other U.S. supplier. After its investigation, the United States has concluded that Keystone has the intention and ability to compete in the development, production, sale and service of S&I in the United States.

### C. Procedure

The proposed Final Judgment requires Heraeus to divest the Divestiture Assets to Keystone within sixty (60) calendar days after the Court signs the Asset Preservation Stipulation and Order in this matter. The Divestiture Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer to compete effectively in the relevant market. Heraeus must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the Acquirer.

In the unlikely event that the sale to Keystone does not occur as anticipated, the proposed Final Judgment provides that a trustee would be appointed to effect the sale of the Divestiture Assets. In that event, the alternative Acquirer similarly would be able to determine which portion of the Divestiture Assets it would need to compete in the development, production, sale, and service of S&I in the United States.

### D. Waiver of Noncompete Provisions

To be an effective S&I supplier, a firm must employ a network of dedicated sales and service representatives that can provide on-call service to steel mill customers. A robust sales and service organization is critical to establishing the firm's reputation to provide accurate and reliable service. Following the transaction, Heraeus terminated several experienced sales and service employees of Minco and/or Heraeus, and imposed, as a condition of the employees' severance agreements, a two-year ban on employment in the S&I industry. The United States has concluded that, under the facts and circumstances of this case, these noncompete provisions are overbroad and have impeded the expansion and/or entry of other S&I firms. Accordingly, the proposed Final Judgment requires Heraeus to waive any existing noncompete agreement or other restrictive covenant that may bind any former employee of either Heraeus or Minco in the United States, without imposing any financial penalty on any such former employee. Heraeus also shall not enter into any noncompete or other restrictive covenant with any former, current, or future employee of Heraeus or Minco during the two years following the filing of the Complaint. The United States has determined that the availability of experienced personnel may help facilitate the entry and/or expansion of other S&I firms in the United States.

### E. Notice of Future Acquisitions

Because the transaction was not reportable under the HSR Act, the Division did not learn of the transaction until after it was consummated and Heraeus had undertaken significant integration of the former Minco assets. The proposed Final Judgment requires Heraeus to provide the United States with notice (similar to HSR Act notice) of any future acquisition by Heraeus of any firm that provides S&I in the United States. This provision will ensure that the United States has the opportunity to review any future transaction before the assets are integrated.

### F. Other Provisions

The proposed Final Judgment provides that, at the Acquirer's option, Heraeus shall enter into an agreement to provide training

[1] U.S. Department of Justice Antitrust Division Policy Guide to Merger Remedies (June 2011), available at *http://www.justice.gov/atr/public/guidelines/27350.pdf* (Identifying an upfront buyer provides greater assurance that the divestiture package contains the assets needed to create a viable entity that will preserve competition.)

and technical support regarding the operation of any purchased Divestiture Asset to the personnel of the Acquirer. The proposed Final Judgment also requires Heraeus to provide the Acquirer with information relating to Heraeus and former Minco personnel in the United States to enable the Acquirer to make offers of employment, and prevents Heraeus from interfering with any negotiations to employ any current or former Heraeus or Minco employee.

Moreover, because the customer qualification process can be a high barrier to entry, the proposed Final Judgment provides that Heraeus shall allow customers to use Heraeus products and equipment in the testing and/or qualification of any S&I, and that Heraeus must waive any contractual restrictions that otherwise would preclude such usage.

## IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Heraeus.

## V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Heraeus have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street NW., Suite 8700
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Heraeus. The United States could have continued the litigation and sought divestiture of the Minco assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of S&I in the relevant market identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, and avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

## VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 2, 2014

Respectfully submitted,

____/__s/_____

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## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERAEUS ELECTRO–NITE CO., LLC,

Defendant.

CASE NO: 1:14–cv–00005
JUDGE: James Boasberg
FILED: 01/02/2014

## ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

## I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order:

A. ''Heraeus'' means defendant Heraeus Electro-Nite Co., LLC, a Delaware corporation with its headquarters in Langhorne, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Minco'' means Midwest Instrument Company, Inc., a Wisconsin corporation with its headquarters in Hartland, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''S&I'' means single-use sensors and instruments used to measure and monitor the temperature and chemical composition of molten steel.

D. ''Acquirer'' means Keystone Sensors, LLC or another entity to which Heraeus divests the Divestiture Assets.

E. ''Keystone'' means Keystone Sensors, LLC, a Delaware corporation headquartered in Cranberry Township, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Divestiture Assets'' means all assets of Heraeus that (1) were acquired from Minco pursuant to the Asset Purchase Agreement between the companies dated August 29, 2012 (and subject to the conditions and limitations specified in that agreement), and (2) are located in the United States or Mexico, including, but not limited to:

1. The former Minco facilities located at 541 Industrial Drive, Hartland, Wisconsin and at 2735 E. Oakland Avenue, Johnson City, Tennessee;

2. All remaining assets from the former Minco facility, located at Avenida Letra D No. 1005, Monterrey, Mexico;

3. All remaining tangible assets, including, but not limited to, all manufacturing equipment, tooling and fixed assets, personal property, remaining finished or partially finished inventory, office furniture, materials, supplies, other tangible property, and all other assets, used in connection with the Divestiture Assets; all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Assets; all teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements; all customer lists, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets; and

4. All intangible assets, including, but not limited to, all intellectual property, including, but not limited to, patents, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Heraeus provides to its own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and

[4] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

development efforts relating to S&I, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

## II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Heraeus' prompt divestiture of the Divestiture Assets for the purpose of remedying the loss of competition alleged in the Complaint. This Asset Preservation Stipulation and Order ensures that, until such divestiture required by the Proposed Final Judgment has been accomplished, the Divestiture Assets will remain as economically viable, competitive, and saleable assets.

## III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

## IV. COMPLIANCE WITH AND ENTRY OF PROPOSED FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Heraeus and by filing that notice with the Court. Heraeus agrees to arrange, at its expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States, in its sole discretion. The publication shall be arranged no later than three business days after Heraeus' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Heraeus shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Heraeus shall abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Asset Preservation Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Asset Preservation Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Asset Preservation Stipulation and Order, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then Heraeus is released from all further obligations under this Asset Preservation Stipulation and Order, and the making of this Asset Preservation Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

E. Heraeus represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that Heraeus will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

## V. ASSET PRESERVATION PROVISIONS

Until the divestiture required by the proposed Final Judgment have been accomplished:

A. Heraeus will not destroy, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets, even if those assets are no longer used by Heraeus, except that Heraeus may continue to use, sell or dispose of inventory formerly owned by Minco in the normal course of business. Within twenty (20) days after the entry of the Asset Preservation Stipulation and Order, Heraeus will inform the United States of the steps it has taken to comply with this Asset Preservation Stipulation and Order.

B. Heraeus will preserve all corporate and commercial books and records formerly belonging to Minco that are currently in Heraeus' possession.

C. Heraeus will not terminate (except for cause) any United States-based full-time employee formerly employed by Minco. Heraeus' employees with primary responsibility for the productive use of the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendant's regular, established job posting policy. Heraeus shall provide the United States with ten (10) calendar days' notice of such transfer.

D. Heraeus will preserve the tooling, equipment, product and process drawing and specifications, and other items necessary to manufacture products formerly manufactured by Minco.

E. Heraeus shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

F. Heraeus shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

G. Subject to the approval of the United States, Heraeus shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Heraeus' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Heraeus shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Heraeus fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

## VI. DURATION OF ASSET PRESERVATION OBLIGATIONS

Heraeus' obligations under Section V of this Asset Preservation Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Heraeus is released from all further obligations under this Asset Preservation Stipulation and Order.

Dated: January 2, 2014

Respectfully submitted,

**FOR PLAINTIFF**
**UNITED STATES OF AMERICA**

_____/s/_____
Lowell R. Stern * (D.C. BAR #440487)
United States Department of Justice
Antitrust Division
Litigation II Section
450 Fifth Street NW, Suite 8700
Washington, DC 20530
Tel: (202) 514–3676

*Attorney of Record

**FOR DEFENDANT**
**HERAEUS ELECTRO-NITE CO., LLC**

_____/s/_____
Paul M. Honigberg, Esq. (D.C. Bar #342576)
Blank Rome LLP
Watergate
600 New Hampshire Avenue NW.
Washington, D.C. 20037
(202) 772–5800

_____/s/_____
Jeremy A. Rist, Esq.
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103–6998
Phone: (215) 569–5361

*ORDER*

IT IS SO ORDERED by the Court, this ____ day of _____, 2014.

_____
United States District Judge

## CERTIFICATE OF SERVICE

I, Lowell R. Stern, hereby certify that on January 2, 2014, I caused a copy of the foregoing Competitive Impact Statement, as well as the Complaint, Asset Preservation Stipulation and Order, proposed Final Judgment, and Explanation of Consent Decree Procedures, to be served upon defendant Heraeus Electro-Nite Co., LLC, by mailing the documents electronically to its duly authorized legal representative as follows:

Counsel for Defendant Heraeus Electro-Nite Co., LLC:

Paul M. Honigberg, Esq. (D.C. Bar #342576)

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_____/s/_____
Lowell R. Stern, Esquire
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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERAEUS ELECTRO–NITE CO., LLC,

Defendant.

CASE NO: 1:14–cv–00005
JUDGE: James Boasberg
FILED: 01/02/2014

**PROPOSED FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on January 2, 2014, the United States and Defendant Heraeus Electro-Nite Co., LLC (''Heraeus''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Heraeus agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Heraeus to assure that competition is substantially restored;

AND WHEREAS, the United States requires Heraeus to divest certain assets and take certain other actions for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Heraeus has represented to the United States that the divestiture required below can and will be made and that Heraeus will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Heraeus under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

**II. Definitions**

As used in this Final Judgment:

A. ''Heraeus'' means defendant Heraeus Electro-Nite Co., LLC, a Delaware corporation with its headquarters in Langhorne, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Minco'' means Midwest Instrument Company, Inc., a Wisconsin corporation with its headquarters in Hartland, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''S&I'' means single-use sensors and instruments used to measure and monitor the temperature and chemical composition of molten steel.

D. ''Acquirer'' means Keystone Sensors, LLC or another entity to which Heraeus divests the Divestiture Assets.

E. ''Keystone'' means Keystone Sensors, LLC, a Delaware corporation headquartered in Cranberry Township, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Divestiture Assets'' means all assets of Heraeus that (1) were acquired from Minco pursuant to the Asset Purchase Agreement between the companies dated August 29, 2012 (and subject to the conditions and limitations specified in that agreement), and (2) are located in the United States or Mexico, including, but not limited to:

1. The former Minco facilities located at 541 Industrial Drive, Hartland, Wisconsin and at 2735 E. Oakland Avenue, Johnson City, Tennessee;

2. All remaining assets from the former Minco facility, located at Avenida Letra D No. 1005, Monterrey, Mexico;

3. All remaining tangible assets, including, but not limited to, all manufacturing equipment, tooling and fixed assets, personal property, remaining finished or partially finished inventory, office furniture, materials, supplies, other tangible property, and all other assets, used in connection with the Divestiture Assets; all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Assets; all teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements; all customer lists, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets; and

4. All intangible assets, including, but not limited to, all intellectual property, including, but not limited to, patents, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Heraeus provides to its own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to S&I, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

**III. Applicability**

This Final Judgment applies to Heraeus, as defined above, and all other persons in active concert or participation with Heraeus who receive actual notice of this Final Judgment by personal service or otherwise.

**IV. Divestiture**

A. Heraeus is ordered and directed, within sixty (60) calendar days after the signing of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period not to exceed thirty (30) calendar days, and shall notify the Court in such circumstances. Heraeus agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Notwithstanding the provisions of Paragraph IV.A, upon written request from Heraeus, the United States, in its sole discretion, may agree to exclude from the Divestiture Assets any portion thereof that the Acquirer, at its option, elects not to acquire.

C. Heraeus shall offer to furnish to the Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Heraeus shall make available such information to the United States at the same time that such information is made available to any other person.

D. Heraeus shall provide the Acquirer and the United States with the name, job title and other contact information relating to all Heraeus personnel in the United States who were formerly employed by Minco, excluding shareholders and former shareholders of Minco, to enable the Acquirer to make offers of employment. Heraeus shall also provide the Acquirer and the United States with the name, last job title, and last known address and other contact information for former employees of Minco or Heraeus in the United States whose employment ended on or after January 1, 2012, to enable the Acquirer to make offers of employment to such persons. Heraeus shall not interfere with any negotiations by the Acquirer to employ any such current or former Heraeus or Minco employee described in this section.

E. Heraeus shall permit the Acquirer to have reasonable access to personnel and to make inspections of the physical facilities included in the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Should the Acquirer elect to acquire the Johnson City, Tennessee and/or Hartland, Wisconsin facilities that Heraeus acquired from Minco, Heraeus shall assign the lease(s) to these facilities to the Acquirer, subject to the landlord(s) permission, and shall not interfere with any negotiations between the Acquirer and the landlord(s) concerning assignment of the lease(s).

G. At the option of the Acquirer, Heraeus shall enter into an agreement to provide training and technical support regarding the operation of any purchased Divestiture Asset to the personnel of the Acquirer.

H. Heraeus shall warrant to the Acquirer that each asset that is currently operational will be operational on the date of sale.

I. Heraeus shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

J. Heraeus shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Heraeus will not undertake, directly or indirectly, any challenge to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

K. At the option of Heraeus, the Acquirer shall provide Heraeus with a non-exclusive, non-transferable license for the intangible assets described in II(F)(4), above, that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale of S&I.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the development, production, sale and service of S&I in the United States. The divestiture shall be accomplished in such a way so as to satisfy the United States, in its sole discretion, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of the development, production, sale and service of S&I; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and Heraeus gives Heraeus the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Trustee**

A. If Heraeus has not divested the Divestiture Assets within the time period specified in Section IV(A), Heraeus shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Heraeus any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Heraeus shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Heraeus must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Heraeus, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Heraeus and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Heraeus shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Heraeus shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Heraeus shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VI. Notice of Proposed Divestiture**

A. Unless the Acquirer is Keystone, within two (2) business days following execution of a definitive divestiture agreement, Heraeus or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Heraeus. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Heraeus, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer of the Divestiture Assets. Heraeus and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the

request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Heraeus, the Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Heraeus and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Heraeus' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Heraeus under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Heraeus shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Preserving and Maintaining Divestiture Assets**

Until the divestiture required by this Final Judgment has been accomplished, Heraeus shall take all steps necessary to comply with the Asset Preservation Order entered by this Court. Heraeus shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Waiver of Noncompete Agreements**

A. Heraeus shall waive any existing noncompete agreement or other restrictive covenant that may bind any former employee of either Heraeus or Minco in the United States, without imposing any financial penalty on any such employee. Heraeus shall, no later than twenty-one (21) calendar days after the filing of the Complaint in this matter, provide each such former employee with written notice of the waiver and provide copies of each such waiver to the United States.

B. For a period of two years following Heraeus' agreement to the terms of this Final Judgment, Heraeus shall not require any employee in the United States to agree to a noncompete restriction or other restrictive covenant as a condition of severance or any other agreement relating to an employee's termination of employment.

C. This provision shall not apply to any current or former shareholder of Minco.

**X. Use of Equipment**

Heraeus shall allow customers, and shall so notify them, to use without consequence Heraeus products and equipment in the testing and/or qualification of any S&I, including waiving any contractual restrictions or the imposition of any warranty- or usage-related defenses to claims that may arise.

**XI. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Heraeus shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Heraeus has taken to solicit buyers for the Divestiture Assets, and to provide required information to the prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Heraeus, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Heraeus shall deliver to the United States an affidavit that describes in reasonable detail all actions Heraeus has taken and all steps Heraeus has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Heraeus shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Heraeus' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Heraeus shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

**XII. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, the Asset Preservation Order, or any related orders, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Heraeus, be permitted:

(1) access during Heraeus' office hours to inspect and copy, or at the option of the United States, to require Heraeus to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Heraeus, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Heraeus' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Heraeus.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Heraeus shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Heraeus to the United States, Heraeus represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Heraeus marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Heraeus ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XIII. Notification**

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Heraeus, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any entity engaged in the development, production, sale or service of S&I in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the development, production, sale and service of S&I. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional

information, Heraeus shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

**XIV. No Reacquisition**

During the term of this Final Judgment, Heraeus may not reacquire any part of the Divestiture Assets purchased by the Acquirer.

**XV. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XVI. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

**XVII. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

[FR Doc. 2014–00709 Filed 1–15–14; 8:45 am]

BILLING CODE 4410–11–P

## DEPARTMENT OF LABOR

### Employment and Training Administration.

### Announcement Regarding a Change in Eligibility for Unemployment Insurance (UI) Claimants in Colorado, Florida, Michigan, Rhode Island, the Virgin Islands and Washington in the Emergency Unemployment Compensation 2008 (EUC08) Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for this program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

The following changes have occurred since the publication of the last notice regarding states' EUC08 trigger status:

- Colorado triggers ''off'' Tier 3 of EUC08 effective 12/14/2013.

Based on data released by the Bureau of Labor Statistics on November 22, 2013, the three month average, seasonally adjusted total unemployment rate in Colorado was 6.9%, falling below the 7.0% trigger rate threshold necessary to remain ''on'' Tier 3 of EUC08. The week ending December 14, 2013, will be the last week in which EUC08 claimants in Colorado who have exhausted Tier 2, and are otherwise eligible, can establish Tier 3 eligibility.

- Florida triggers ''off'' Tier 3 of EUC08 effective 12/14/2013.

Based on data released by the Bureau of Labor Statistics on November 22, 2013, the three month average, seasonally adjusted total unemployment rate in Florida was 6.8%, falling below the 7.0% trigger rate threshold necessary to remain ''on'' Tier 3 of EUC08. The week ending December 14, 2013, will be the last week in which EUC08 claimants in Florida who have exhausted Tier 2, and are otherwise eligible, can establish Tier 3 eligibility.

- Michigan triggers ''on'' Tier 4 of EUC08 effective 12/8/2013.

Based on data released by the Bureau of Labor Statistics on November 22, 2013, the three month average, seasonally adjusted total unemployment rate in Michigan was 9.0%, meeting the 9.0% trigger rate threshold necessary to trigger ''on'' Tier 4 of EUC08. The week beginning December 8, 2013, will be the first week in which EUC08 claimants in Michigan who have exhausted Tier 3, and are otherwise eligible, can establish Tier 4 eligibility.

- Rhode Island triggers ''on'' Tier 4 of EUC08 effective 12/8/2013.

Based on data released by the Bureau of Labor Statistics on November 22, 2013, the three month average, seasonally adjusted total unemployment rate in Rhode Island was 9.1%, exceeding the 9.0% trigger rate threshold necessary to trigger ''on'' Tier 4 of EUC08. The week beginning December 8, 2013, will be the first week in which EUC08 claimants in Rhode Island who have exhausted Tier 3, and are otherwise eligible, can establish Tier 4 eligibility.

- Washington triggers ''on'' to Tier 3 of EUC08 effective 12/8/2013.

Based on data released by the Bureau of Labor Statistics on November 22, 2013, the three month average, seasonally adjusted total unemployment rate in Washington was 7.0%, meeting the 7.0% trigger rate threshold necessary to trigger ''on'' Tier 3 of EUC08. The week beginning December 8, 2013, will be the first week in which EUC08 claimants in Washington who have exhausted Tier 2, and are otherwise eligible, can establish Tier 3 eligibility.

- The Virgin Islands triggers ''on'' to Tier 4 of EUC08 effective 11/10/2013.

Based on data released by the Bureau of Labor Statistics on October 22, 2013, the estimated three month average, seasonally adjusted total unemployment rate in the Virgin Islands was 9.8%, exceeding the 9.0% trigger rate threshold necessary to trigger ''on'' in Tier 4 of EUC08. The week beginning November 10, 2013, was the first week in which EUC08 claimants in the Virgin Islands who had exhausted Tier 3 and were otherwise eligible, could establish Tier 4 eligibility.

*Information for Claimants*

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and 112–240, and the operating instructions issued to the states by the Department.

In the case of a state beginning or concluding a payable period in EUC08, the State Workforce Agency (SWA) will furnish a written notice of any change in potential entitlement to each individual who could establish, or had established, eligibility for benefits (20 CFR 615.13 (c)(1) and (c)(4)). Persons who believe they may be entitled to benefits in the EUC08 program, or who

wish to inquire about their rights under this program, should contact their SWA.

**FOR FURTHER INFORMATION CONTACT:** Tony Sznoluch, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3176 (this is not a toll-free number) or by email: *sznoluch.anatoli@dol.gov.*

Signed in Washington, DC, this 6th day of December, 2013.

**Eric M. Seleznow,**

*Acting Assistant Secretary for Employment and Training.*

[FR Doc. 2014–00668 Filed 1–15–14; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *December 30, 2013 through January 3, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,021 | Ver-Rest Manufacturing | West Branch, IA | August 23, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,189 | Capgemini America, Inc., Capgemini North America, Deegit, IT Trailblazers, Millenium, etc. | Irving, TX | October 30, 2012. |
| 83,220 | Rock-Tenn Company, Wisconsin Business Unit, Milwaukee Plant, Manpower. | Milwaukee, WI | October 9, 2012. |
| 83,243 | Cole Hersee Company, Littelfuse, Boston Division, Atrium Staffing. | Boston, MA | November 25, 2012. |
| 83,255 | General Dynamics OTS (Aerospace), Inc., General Dynamics Ordinance and Tactical Systems, Inc. | Moses Lake, WA | November 27, 2012. |
| 83,286 | Yale Sportswear Corporation | Federalsburg, MD | December 11, 2012. |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,240 | Pepperidge Farm, Finance Department, Campbell Soup Company, McIntyre Corp. Accounting, etc. | Norwalk, CT | |

I hereby certify that the aforementioned determinations were issued during the period of *December 30, 2013 through January 3, 2014.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC, this 9th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance .*

[FR Doc. 2014–00739 Filed 1–15–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of

Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[39 TAA petitions instituted between 12/30/13 and 1/3/14]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 83338 | Broadwind Towers Inc. (State/One-Stop) | Manitowoc, WI | 12/30/13 | 12/27/13 |
| 83339 | Veeco Instrument Inc. (State/One-Stop) | Plainview, NY | 12/30/13 | 12/27/13 |
| 83340 | Noranda Aluminum Holding Corporation (State/One-Stop) | New Madrid, MO | 12/30/13 | 12/26/13 |
| 83341 | Alliance Laundry Systems (State/One-Stop) | Ripon, WI | 12/30/13 | 12/27/13 |
| 83342 | Citigroup, Inc. (State/One-Stop) | Long Island City, NY | 12/30/13 | 12/27/13 |
| 83343 | Kachemak Shellfish Growers Co-Op (State/One-Stop) | Coastal Areas, AK | 12/30/13 | 12/27/13 |
| 83344 | Rellim Business Solutions (Workers) | Clermont, IA | 12/31/13 | 12/30/13 |
| 83345 | Kaleidoscope Industries (State/One-Stop) | Howell, MI | 12/31/13 | 12/30/13 |
| 83346 | RR Donnelley (Workers) | Jefferson City, MO | 12/31/13 | 12/26/13 |
| 83347 | Koppers Inc. (Union) | Follansbee, WV | 12/31/13 | 12/30/13 |
| 83348 | Ocwen Financial Corporation (State/One-Stop) | Lewisville, TX | 12/31/13 | 12/30/13 |
| 83349 | Peters Revington—A Division of CRI (Company) | Delphi, IN | 12/31/13 | 12/27/13 |
| 83350 | Ocwen Financial (Workers) | Ft. Washington, PA | 12/31/13 | 12/30/13 |
| 83351 | Sykes Enterprises Incorporated (State/One-Stop) | Wilton, ME | 12/31/13 | 12/30/13 |
| 83352 | Abt Associates Inc (Company) | Cambridge, MA | 12/31/13 | 12/30/13 |
| 83353 | NCO (Workers) | Norcross, GA | 12/31/13 | 12/30/13 |
| 83354 | Logicus LLC (State/One-Stop) | Dallas, TX | 12/31/13 | 12/30/13 |
| 83355 | J. Kinderman & Sons, In (Workers) | Philadelphia, PA | 12/31/13 | 11/22/13 |
| 83356 | Convergys Customer Management Group, Inc. (State/One-Stop). | Brownsville, TX | 01/02/14 | 12/31/13 |
| 83357 | TVR Machine LLC (Company) | Dayton, OH | 01/02/14 | 12/31/13 |
| 83358 | Beechcraft Corporation (State/One-Stop) | Wichita, KS | 01/02/14 | 12/31/13 |
| 83359 | Cessna Aircraft Company (State/One-Stop) | Independence, KS | 01/02/14 | 12/31/13 |
| 83360 | United Technologies Corporation (State/One-Stop) | Burnsville, MN | 01/02/14 | 12/31/13 |
| 83361 | Aiken Regional Medical Centers (State/One-Stop) | Aiken, SC | 01/02/14 | 12/31/13 |
| 83362 | Federal-Mogul (State/One-Stop) | Orangeburg, SC | 01/02/14 | 12/31/13 |
| 83363 | Fram Filtration (State/One-Stop) | York, SC | 01/02/14 | 12/31/13 |
| 83364 | American Express GCA (State/One-Stop) | Salt lake City, UT | 01/02/14 | 12/31/13 |
| 83365 | Harvey Industries (State/One-Stop) | Aiken, SC | 01/02/14 | 12/31/13 |

[FR Doc. 2014–00738 Filed 1–15–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,774]**

### Campbell Soup Company, Finance Department, Including On-Site Leased Workers From Aerotek Professional Services, Magellan Search & Staffing, Tapfin, and ACCU Staffing Services, Camden, NJ, Ta–W–82,774a; Pepperidge Farm, Finance Department, a Subsidiary of Campbell Soup Company, Including On-Site Leased Workers From Mcintyre Corporation Accounting & Finance, Norwalk, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 17, 2013, applicable to workers of Campbell Soup Company, Finance Department, including on-site leased workers from Aerotek Professional Services, Magellan Search & Staffing, TAPFIN, and ACCU Staffing Services, Camden, New Jersey (TA–W–82,774). The Department's notice of determination was published in the **Federal Register** on July 5, 2013 (Volume 78 FR Pages 40508–40510).

At the request of a state workforce office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in finance support services.

The state workforce office reports that the workers at Pepperidge Farm, Finance Department, a subsidiary of Campbell Soup Company, including on-site leased workers from McIntyre Corporate Accounting & Finance, Norwalk, Connecticut (TA–W–82,774A)

were also impacted by the acquisition of services from a foreign country.

The amended notice applicable to TA–W–82,774 is hereby issued as follows:

''All workers of Campbell Soup Company, Finance Department, including on-site leased workers from Aerotek Professional Services, Magellan Search & Staffing, TAPFIN, and ACCU Staffing Services, Camden, New Jersey (TA–W–82,774) and Pepperidge Farm, Finance Department, a subsidiary of Campbell Soup Company, including on-site leased workers from McIntyre Corporate Accounting & Finance, Norwalk, Connecticut (TA–W–82,774A) who became totally or partially separated from employment on or after May 31, 2012, through June 17, 2015, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 2nd day of January, 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–00678 Filed 1–15–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *December 16, 2013 through December 27, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative

determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,115 | Lester Electrical of Nebraska, Inc., Advance Services, Inc. | Lincoln, NE | September 24, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,177 | JP Morgan Chase & Company, Mortgage Banking Division, Solicitation Prework Group. | Florence, SC | October 28, 2012. |
| 83,180 | Huber+Suhner, Inc., Huber+Suhner North America, Spherion | Essex Junction, VT | October 29, 2012. |
| 83,205 | Brooks Automation, Inc., Polycold Manufacturing Division, R&D Technical Services, and Volt Workforce. | Petaluma, CA | November 6, 2012. |
| 83,217 | Airtex Products L.P., UCI-Fram Group, Manpower, Employment Plus, and Unique. | Fairfield, IL | November 12, 2012. |
| 83,222 | Advance Auto Business Support, LLC, IT Department, Advance Stores Company, Accenture, Alliance of Professionals. | Roanoke, VA | November 18, 2012. |
| 83,227 | Avery Products, CCL Industries, United Personnel, Zero Chaos, Integration Int'l & Manpower. | Chicopee, MA | November 19, 2012. |
| 83,227A | Avery Products, CCL Industries, Inc., Robert Half | Holliston, MA | November 19, 2012. |
| 83,230 | IBM Corporation, Global Administration, Manpower | Somers, NY | November 19, 2012. |
| 83,233 | Meggitt Aircraft Braking Systems Corporation, Meggitt PLC, Kelly Services. | Akron, OH | December 29, 2013. |
| 83,233A | Leased Workers and Systems Pros, Amotec, and Computer Express, Inc., Meggitt Aircraft Braking Systems Corporation. | Akron, OH | November 20, 2012. |
| 83,264 | Block and Company, Inc., Bristol Custom Solutions, Kelly Services | Bristol, TN | December 4, 2012. |
| 83,269 | Daikin McQuay, Daikin Applied Americas, Inc., Daikin Industries, Ltd., ISSI. | Auburn, NY | December 4, 2012. |
| 83,276 | Windsor USA, LLC, Windsor Group, Inc., Windsor Service, Inc. | Hebron, KY | December 7, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,005 | Mars Petcare US, Inc., Mars Incorporated, Staff Management | Joplin, MO. | |
| 83,076 | Berry Plastics Corporation and Subsidiaries, Select Staffing | Anaheim, CA. | |
| 83,093 | Pilgrim's Pride Corporation, JBS USA Holdings Inc | Batesville, AR. | |
| 83,136 | Southworth Company | Agawam, MA. | |
| 83,231 | Visa U.S.A., Inc., Client Support Services, Dispute Analysis Support, Aerotek, Insight Global. | Highlands Ranch, CO. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,202 | Floturn, Inc. | Fairfield, OH. | |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,248 | Castle China, LLC | New Castle, PA. | |

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,293 | Matric Limited | Seneca, PA. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 83,237 | REC Advanced Silicon Materials, LLC, Spherion Recruiting and Staffing. | Silver Bow, MT. | |
| 83,278 | Spirit Aerosystems, Inc | Wichita, KS. | |

I hereby certify that the aforementioned determinations were issued during the period of *December 16, 2013 through December 27, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 2nd day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–00680 Filed 1–15–14; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of January 2014.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

## Appendix

43 TAA Petitions Instituted Between 12/16/13 and 12/27/13

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 83295 | Lincoln Paper and Tissue LLC (Company) | Lincoln, ME | 12/16/13 | 12/16/13 |
| 83296 | Berry Plastics Corporation (State/One-Stop) | Alsip, IL | 12/16/13 | 12/13/13 |
| 83297 | Convergys (Company) | Ogden, UT | 12/16/13 | 12/13/13 |
| 83298 | Vantiv LLC (State/One-Stop) | Symmes Township, OH | 12/16/13 | 12/13/13 |
| 83299 | Transwitch Corporation (State/One-Stop) | Shelton, CT | 12/16/13 | 12/13/13 |
| 83300 | Fulton Industries, Inc. (Company) | Rochester, IN | 12/17/13 | 12/16/13 |
| 83301 | UnitedHealthcare (Company) | Hooksett, NH | 12/17/13 | 12/09/13 |

43 TAA PETITIONS INSTITUTED BETWEEN 12/16/13 AND 12/27/13—Continued

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 83302 | American Bridge Manufacturing (Workers) | Coraopolis, PA | 12/17/13 | 12/09/13 |
| 83303 | Amphenol (State/One-Stop) | Endicott, NY | 12/18/13 | 12/17/13 |
| 83304 | Cmed Inc. (Workers) | New Providence, NJ | 12/18/13 | 12/11/13 |
| 83305 | Merastar (Kemper Preferred) (Workers) | Dewitt, NY | 12/18/13 | 12/13/13 |
| 83306 | New United Motor Manufacturing, Inc. (NUMMI) (State/One-Stop). | Newark, CA | 12/18/13 | 12/17/13 |
| 83307 | Veeco Instrument Inc. (MOCVD Systems) (State/One-Stop). | Somerset, NJ | 12/18/13 | 12/17/13 |
| 83308 | Bomag Americas (Union) | Kewanee, IL | 12/19/13 | 12/16/13 |
| 83309 | Southern California Edison (Workers) | Irwindale, CA | 12/19/13 | 12/18/13 |
| 83310 | Matric Limited (State/One-Stop) | Seneca, PA | 12/19/13 | 12/18/13 |
| 83311 | Worthington Industries, Inc. (State/One-Stop) | Baltimore, MD | 12/19/13 | 12/18/13 |
| 83312 | Eaton/Cooper Power Systems (State/One-Stop) | Olean, NY | 12/19/13 | 12/18/13 |
| 83313 | SuperMedia (State/One-Stop) | Albany, NY | 12/20/13 | 12/19/13 |
| 83314 | McFarlane DBA IndusPac Pacific Foam (State/One-Stop) | Ontario, CA | 12/20/13 | 12/19/13 |
| 83315 | Unisys Corporation (Workers) | Blue Bell, PA | 12/20/13 | 12/19/13 |
| 83316 | HBC Solutions Inc. (Workers) | Limerick, PA | 12/20/13 | 12/20/13 |
| 83317 | Wind Clean Corporation (State/One-Stop) | Coleman, TX | 12/20/13 | 12/19/13 |
| 83318 | Trinity Structural Towers, Inc. (State/One-Stop) | Coleman, TX | 12/20/13 | 12/19/13 |
| 83319 | Viatech Publishing (State/One-Stop) | Springfield, MO | 12/23/13 | 12/20/13 |
| 83320 | FIS (State/One-Stop) | Milwaukee, WI | 12/23/13 | 12/20/13 |
| 83321 | Los Alamos Technical Associates-Environmental Services of KY (Union). | Kevil, KY | 12/23/13 | 12/20/13 |
| 83322 | Sandoz (A subsidiary of Novartis) (Workers) | Princeton, NJ | 12/23/13 | 12/20/13 |
| 83323 | Dell (Company) | Austin, TX | 12/23/13 | 12/19/13 |
| 83324 | ING (State/One-Stop) | Minneapolis, MN | 12/23/13 | 12/19/13 |
| 83325 | Broadwind Towers, Inc. (State/One-Stop) | Abilene, TX | 12/24/13 | 12/20/13 |
| 83326 | Advance Tabco (State/One-Stop) | Edgewood, NY | 12/24/13 | 12/20/13 |
| 83327 | Miller Compressing Company (State/One-Stop) | Milwaukee, WI | 12/24/13 | 12/20/13 |
| 83328 | General Electric Company, GE Transportation (Union) | Erie, PA | 12/24/13 | 12/20/13 |
| 83329 | Elkay (State/One-Stop) | Broadview, IL | 12/24/13 | 12/23/13 |
| 83330 | Just Manufacturing (State/One-Stop) | Franklin Park, IL | 12/24/13 | 12/23/13 |
| 83331 | Trinity Structural Towers, Inc. (State/One-Stop) | Clinton, IL | 12/26/13 | 12/26/13 |
| 83332 | Engineered Products Industries, LLC (State/One-Stop) | St. Clair, MO | 12/26/13 | 12/24/13 |
| 83333 | Katana Summit, LLC (State/One-Stop) | Columbus, NE | 12/26/13 | 12/23/13 |
| 83334 | IBM (State/One-Stop) | Essex Junction, VT | 12/26/13 | 12/24/13 |
| 83335 | UBS (State/One-Stop) | Jersey City, NJ | 12/27/13 | 12/26/13 |
| 83336 | Travelplan USA, Inc. (State/One-Stop) | Jamaica, NY | 12/27/13 | 12/26/13 |
| 83337 | Aon Hewitt (State/One-Stop) | Lincolnshire, IL | 12/27/13 | 12/26/13 |

[FR Doc. 2014–00679 Filed 1–15–14; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2014–0001]**

### National Advisory Committee on Occupational Safety and Health (NACOSH)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of a meeting of NACOSH.

**SUMMARY:** NACOSH will meet February 12, 2014, in Washington, DC. In conjunction with the committee meeting, a NACOSH Work Group will meet February 11, 2014.

**DATES:** *NACOSH meeting:* NACOSH will meet from 9 a.m. to 5 p.m., Wednesday, February 12, 2014.

*NACOSH Work Group meeting:* A NACOSH Work Group will meet from 1–4 p.m., Tuesday, February 11, 2014.

*Comments, requests to speak, speaker presentations, and requests for special accommodation:* You must submit (postmark, send, transmit) comments, requests to address NACOSH, speaker presentations (written or electronic), and requests for special accommodation for the NACOSH and NACOSH Work Group meetings by February 4, 2014.

**ADDRESSES:** *NACOSH and NACOSH Work Group meetings:* NACOSH and the NACOSH Work Group will meet in Room C–5320–6, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

*Submission of comments, requests to speak, and speaker presentations:* You may submit comments, requests to address NACOSH, and speaker presentations using one of the following methods:

*Electronically:* You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on that Web page for making submissions;

*Facsimile:* If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

*Regular mail, express mail, hand delivery, or messenger/courier service (hard copy):* You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2014–0001, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA TTY (887) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger service) during normal business hours, 8:15 a.m. to 4:45 p.m., e.t., weekdays.

*Requests for special accommodations:* Please submit requests for special accommodations to attend the NACOSH and NACOSH Work Group meetings by

email, telephone, or hard copy to Ms. Frances Owens, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (OSHA TTY (887) 889–5627); email *owens.frances@dol.gov.*

*Instructions:* Your submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2014–0001). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post in the public docket, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

*For general information about NACOSH and NACOSH meetings:* Ms. Elizabeth Grossman, Director, OSHA Office of Evaluation and Audit Analysis, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2225; email *grossman.elizabeth@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## NACOSH Meeting

NACOSH will meet February 12, 2014, in Washington, DC. Some NACOSH members may attend the meeting electronically. The NACOSH meeting is open to the public.

Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) authorizes NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912a, 41 CFR part 102–3).

The tentative agenda for the NACOSH meeting includes:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);
- Remarks from the Director of the National Institute of Occupational Safety and Health (NIOSH);
- NACOSH Work Group report and consideration of work group recommendations; and
- Public comments.

OSHA transcribes NACOSH meetings and prepares detailed minutes of NACOSH meetings. OSHA posts in the public docket NACOSH meeting transcripts, minutes, written comments, speaker presentations, and other materials submitted to NACOSH or presented at NACOSH and NACOSH Work Group meetings.

## NACOSH Work Group

A NACOSH Work Group will meet February 11, 2014. The meeting is open to the public. The purpose of the NACOSH Work Group is to discuss issues affecting the occupational safety and health of temporary workers and to provide recommendations to NACOSH on best practices for ensuring the workplace safety and health of temporary workers. The NACOSH Work Group will present a report and recommendations to NACOSH at the February 12, 2014, meeting for the Committee's consideration and deliberation.

## Public Participation, Submissions, and Access to Public Record

*NACOSH and NACOSH Work Group meetings:* All NACOSH and NACOSH Work Group meetings are open to the public. Individuals attending NACOSH meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance at 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification (e.g., driver's license) to enter the building. For additional information about building security measures for attending NACOSH and NACOSH Work Group meetings, please contact Ms. Owens (see **ADDRESSES** section).

Individuals requesting special accommodation to attend the NACOSH and NACOSH Work Group meeting should contact Ms. Owens.

*Submission of comments:* You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name and Docket number for this NACOSH meeting (Docket No. OSHA–2014–0001). OSHA will provide copies of your submissions to NACOSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

*Requests to speak and speaker presentations:* If you want to address NACOSH at the meeting you must submit your request to speak, as well as any written or electronic presentation, by February 4, 2014, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The NACOSH Chair may grant requests to address NACOSH as time and circumstances permit.

*Public docket of NACOSH meetings:* OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket, without change. Those documents also may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

OSHA also places in the public docket meeting transcripts, meeting minutes, documents presented at the NACOSH meeting, and other documents pertaining to NACOSH and NACOSH Work Group meetings. These documents may be available online at *http://www.regulations.gov.*

*Access to the public record of NACOSH meetings:* To read or download documents in the public docket, go to Docket No. OSHA–2014–0001 at *http://www.regulations.gov.* The index of that Web page lists all of the documents in the public record for this meeting; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance in making

submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on OSHA's Web page at *http://www.osha.gov.*

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on January 10, 2014.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014–00677 Filed 1–15–14; 8:45 am]

**BILLING CODE 4510–26–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Liquid Radwaste Consistency Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 16 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia. The amendment changes the VEGP Tier 1 (COL Appendix C) Figure 2.3.10–1, Liquid Radwaste System (WLS), and Updated Final Safety Analysis Report (UFSAR) Tier 2 tables, text and figures to align VEGP Tier 1 with Tier 2 information provided in the UFSAR and to achieve consistency within VEGP Tier 1 material by (1) changing the safety classification of the Passive Core Cooling System (PXS) and Chemical and Volume Control System (CVS) compartment drain hubs, (2) changing the connection type from the PXS Compartments drains A and B to a header to match the design description, (3) changing the valve types for three valves in the Tier 1 figure to conform to the design description and (4) changing depiction of Tier 1 WLS components to conform to Tier 1 Figure Conventions.

The granting of the exemption allows the changes to Tier 1 information asked for in the license amendment request. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated August 6, 2013 (ADAMS Accession No. ML13219A074). The licensee supplemented this request on September 16, 2013 (ADAMS Accession No. ML13260A085) and September 27, 2013 (ADAMS Accession No. ML13270A423).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** David H. Jaffe, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1439; email: *David.Jaffe@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 16 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought changes to the VEGP Tier 1 (COL Appendix C) Figure 2.3.10–1, Liquid Radwaste System (WLS), and UFSAR Tier 2 tables, text and figures to align VEGP Tier 1 with Tier 2 information provided in the UFSAR and to achieve consistency within VEGP Tier 1 material by (1) changing the safety classification of the PXS and CVS compartment drain hubs, (2) changing the connection type from the PXS Compartments drains A and B to a header to match the design description, (3) changing the valve types for three valves in the Tier 1 figure to conform to the design description and (4) changing depiction of Tier 1 WLS components to conform to Tier 1 Figure Conventions.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4, Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13308A013.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92); these documents can be found in ADAMS under

Accession Nos. ML13308A005 and ML13308A006, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13305B071 and ML13305B075; respectively. A summary of the amendment documents is provided in Section III of this document.

**II. Exemption**

Reproduced below is the exemption document issued to Vogtle Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 6, 2013, and as supplemented by the letters dated September 16, 2013, and September 27, 2013, Southern Nuclear Operating Company (licensee) requested from the Nuclear Regulatory Commission (Commission) an exemption from the provisions of Title 10 of the *Code of Federal Regulation* (10 CFR) Part 52, Appendix D, Section III.B, ''Design Certification Rule for the AP1000 Design, Scope, and Contents,'' and Tier 1 Figure 2.3.10–1 of the AP1000 Design Control Document (DCD) as part of license amendment request (LAR) 13–015, ''Liquid Radwaste System Consistency Changes.''

For the reasons set forth in Section 3.1 of the NRC staff Safety Evaluation which can be found at ADAMS Accession No. ML13308A013, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the certified DCD Tier 1, Figure 2.3.10–1 as part of license amendment request (LAR) 13–015, ''Liquid Radwaste System Consistency Changes.''

3. As explained in Section 5.0 of the NRC staff Safety Evaluation (ADAMS Accession No. ML13308A013), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

**III. License Amendment Request**

By letter dated August 6, 2013, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, and COLs NPF–91 and NPF–92. The licensee supplemented this application on September 16, 2013, and September 27, 2013. The proposed amendment changes the VEGP Tier 1 (COL Appendix C) Figure 2.3.10–1, WLS, and UFSAR Tier 2 tables, text and figures to align VEGP Tier 1 with Tier 2 information provided in the UFSAR and to achieve consistency within VEGP Tier 1 material by (1) changing the safety classification of the PXS and CVS compartment drain hubs, (2) changing the connection type from the PXS Compartments drains A and B to a header to match the design description, (3) changing the valve types for three valves in the Tier 1 figure to conform to the design description and (4) changing depiction of Tier 1 WLS components to conform to Tier 1 Figure Conventions.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 3, 2013 (78 FR 54288). The September 16, 2013, and September 27, 2013, supplements had no effect on the no significant hazards consideration determination, and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

**IV. Conclusion**

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 6, 2013, and supplemented by letters dated September 16 and September 27, 2013. The exemptions and amendments were issued to the licensee on December 5, 2013 as part of a combined package (ADAMS Accession No. ML13305B061). In the course of the issuance of Amendment 16 and the associated exemptions, an error was made in the date of the initial application; the date which appeared as ''August 16, 2013'' should have been ''August 6, 2013.'' The NRC corrected Amendment No. 16 and the associated exemptions for VEGP Units 3 and 4 in a letter dated December 24, 2013 (ADAMS Accession No. ML13354B940). The ADAMS Accession numbers for the corrected exemptions and amendments are unchanged.

Dated at Rockville, Maryland, this 9th day of January 2014.

For the Nuclear Regulatory Commission.

**Lawrence J. Burkhart,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–00732 Filed 1–15–14; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2010–0292]**

## Consumer Product Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is updating its policy statement on products intended for use by the general public (consumer products). The update reflects our current approach to radiation protection, legislation that has been enacted since the policy was published in 1965, and subsequent approaches taken in the NRC's regulatory framework for exemptions.

**DATES:** This revised policy statement becomes effective on January 16, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2010–0292 when contacting the NRC about the availability of information for this policy statement revision. You may access publicly-

available information and comment submissions related to this policy statement revision by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0292. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Shirley Xu, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7640; email: *Shirley.Xu@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 16, 1965, the Atomic Energy Commission (AEC), the NRC's predecessor agency, issued its policy statement on products intended for use by the general public (consumer products) (30 FR 3462). Under this policy, the AEC and subsequently, the NRC have periodically reevaluated the overall public safety impact to the public of products allowed to be distributed for use by the general public, which are normally used under an exemption from licensing and from all associated regulatory requirements. The NRC staff has reevaluated the policy periodically and found that it has served the agency well and withstood the passage of time. The policy was written in general terms, which contributed to its continuance of use. However, the NRC is updating the policy to include approaches and terminology more consistent with the agency's current approach to radiation protection and to recognize relevant legislative and regulatory actions taken since the policy was originally issued.

## II. Discussion

The 1965 policy used terms consistent with the approach to radiation protection represented primarily in the early documents of the International Commission on Radiation Protection (ICRP). These include ''permissible dose to the gonads'' and ''permissible body burden.'' Newer approaches to radiation protection do not apply such standards. The recommendations of the ICRP originally included control of dose to the gonads because of concern for potential genetic risks (i.e., risks to future generations). Since that time, the ICRP has updated its recommendations, which no longer include separate limits for doses to the gonads, because genetic risks are much lower than estimated at the time the policy was written. Also, early approaches to radiation protection included limits on body burden (i.e., the amount of a radionuclide present in a person's body). In newer approaches radiation protection is achieved by summing the dose from external radiation and the doses from inhaled and ingested radioactive material.

Additional updating is needed due to Federal legislation that has been enacted since 1965. The Energy Reorganization Act of 1974 revised the Atomic Energy Act in a number of ways, primarily to separate the regulatory responsibilities from the AEC and to create the NRC. Relevant AEC policies, such as the subject policy, became the NRC's policies. Also in 1974, the Commission was given the authority to create exemptions from licensing for special nuclear material in addition to byproduct material and source material. The Commission has not issued any exemptions from licensing for products containing special nuclear material, but the revised policy recognizes the authority to do so.

Another relevant legislative action was the National Environmental Policy Act (NEPA) of 1969. In subparagraph 9(c), the policy addresses the consideration of potential impacts to the environment from the possible dispersion of radioactive material and the uncontrolled disposal of products used under exemption. This is generally the primary environmental impact to be considered when evaluating a potential exemption from licensing. Specific procedures for complying with NEPA have been developed and are addressed in part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Therefore, any rulemaking to add an exemption from licensing requirements requires NRC documentation of environmental considerations in accordance with these procedures. In addition, the responsibilities of the former Federal Radiation Council are now performed within the U.S. Environmental Protection Agency (EPA).

Since the issuance of the 1965 policy, the Commission has issued class exemptions, under which additional products belonging to an identified class of products can be approved through a licensing action, if an applicant proposing to manufacture or distribute a product demonstrates that the product is within the class and meets certain safety criteria. This approach to exemptions from licensing is also being recognized in the policy.

Also, the safety criteria for the class exemptions include more specific criteria for accidents than were reflected in the 1965 policy. The revised policy better addresses the level of risk that is acceptable for accident and misuse scenarios. However, the guidance remains relatively general.

The policy directly applies to any potential rulemaking to add or modify exemptions from licensing that cover consumer products and usually does not apply to individual licensing actions involving such products. However, when there is need for interpretation or judgment in the ultimate decision to approve a product, the licensing staff may look to the policy for additional direction. The policy has been reflected in the applicable provisions in the regulations, including specifically the class exemptions, so that the approval of specific products in licensing actions will be consistent with the policy.

In accordance with the policy, the NRC staff has occasionally reevaluated the relevant exemptions. Three of the NRC's recent rulemaking actions included changes that reflected findings of the latest reevaluation (*see* October 16, 2007, 72 FR 58473; July 25, 2012, 77 FR 43666; and May 29, 2013, 78 FR 32310).

Finally, the example products noted in paragraphs 5 and 6 of the policy statement are revised to be more relevant and up to date. For example, thoriated tungsten welding rods, while available to the public as off-the-shelf items, are not intended for widespread personal or household use. Likewise, shipping containers constructed with uranium as shielding are not used by the public in the form of consumer

products. Instead, such examples as electron tubes and smoke detectors were added.

## III. Summary and Analysis of Public Comments

A proposed revision of the Consumer Product Policy Statement was published for public comment on October 14, 2011 (76 FR 63957). The comment period closed December 28, 2011, and four comment letters were received. The comment letters came from the Health Physics Society, a member of a State regulatory staff, an organization representing the industry of manufacturers and distributors, and two certified health physicists (commenting together). There was general support for the policy and the intent to update it. There were no objections to the policy or to the specific changes proposed.

One commenter noted the long history of use of certain products with low dose potential to users and stated that the NRC has had a comprehensive and successful system in place for many years for evaluating the safety of devices in broad context of use in addition to the radionuclide and activity in the product. Another expressed support for the principal considerations in the policy, stating that the changes are reasonable in light of the newer approaches to radiation protection; this commenter also stated agreement with a number of specific points such as that justifiable sources of radiation exposure of the public include those that result in an overall net benefit to society. Most comments reflected a desire for the policy to be more clear or specific, with suggestions made for including additional topics and certain definitions.

*Comment:* Two of the commenters thought that it would be helpful to put a specific value on certain terms in paragraph 2 of the Statement of Policy,[1] which states in part that, in general, risks of exposure will be considered acceptable if ''it is unlikely that individuals in the population will receive more than a small fraction, less than a few hundredths, of individual dose limits in NRC regulations and as recommended by such groups as the ICRP. . . .'' Both of these commenters believed that the use of actual numbers would be helpful and preferred that the current public dose limit be stated.

One of these commenters suggested that more specificity in paragraph 1 of the Statement of Policy would also be helpful. That paragraph states that at the present time it appears unlikely that the total contribution to exposure of the general public would exceed a ''fraction of limits recommended for exposure to all radiation sources'' but if in the future radioactive materials were used in such quantities as to raise a question of the combined exposure from multiple products becoming a ''significant fraction'' of the permissible dose to the public, the Commission would reconsider its policy. This commenter indicated that it would be helpful if the ''fraction of limits recommended for exposure to all radiation sources'' could be quantified as well as the ''significant fraction. . . '' of the public dose limit that will be used as the basis for reconsidering the policy. However, this commenter stated that there was no problem with the proposed revised policy as long as those fractions are no less restrictive than whatever is currently used.

*Response:* Paragraph 2 states that approval of a product depends upon both associated exposures of persons to radiation and the apparent usefulness of the product. The statement in that paragraph about a small fraction of individual dose limits in the NRC's regulations and as recommended by such groups as the ICRP is meant to provide a general guideline on acceptable risks under routine conditions, above which an in-depth analysis and weighing of all factors would be particularly important. Paragraph 2 also addresses risks from accidents or other non-routine scenarios involving exposures to the public. These general guidelines allow for a comparison of the degree of benefit or usefulness to risk for each product.

There is no single dose level that is acceptable for all products. For example, there are two relevant class exemptions for which dose criteria form the primary basis for approving a particular product in licensing. The associated regulations present examples of specific acceptable doses for specific classes of products. One covers self-luminous products, which can be used for a multitude of purposes. For these products, the primary routine dose criterion is 1 mrem (10 μSv)/year. The class exemption for gas and aerosol detectors allows for a more limited set of purposes, which more clearly present a benefit to society, as their purpose must be to protect health, safety, or property. The primary routine dose criterion for the gas and aerosol detector exemption is 5 mrem (50 μSv)/year. These limits are both a small fraction of the current limit for doses to the public of 100 mrem (1 mSv)/year. At the time the policy was written, the recommended limit for exposures to individual members of the public was 500 mrem (5 mSv)/year to the whole body, with additional specific organ limits. As a result, somewhat higher doses from the use of consumer products could have been acceptable at that time. Providing general guidelines in terms of fractions of the recommended limits to the public from all sources continues to be considered the best approach because it is appropriate for the acceptable levels to be in proportion to the overall limits and for more beneficial products to be allowed to result in a somewhat larger fraction of the overall recommended limit than products with limited benefit.

Paragraph 1 provides a general statement of the current level of impact from all consumer products and a level of dose from the combined effect of multiple products at which the NRC will reconsider this policy. There is no way to fully quantify the total doses that individuals in the population are likely to receive as the net effect of products distributed for use under exemptions. The policy is intended to minimize the possibility that members of the public will receive a total dose from exposure to all sources (excluding natural background and medical exposures) that exceeds the public dose limit. Putting a specific value on the significant fraction of the public dose limit that might trigger the Commission to reconsider the policy would not be appropriate because (1) a specific value could imply a higher degree of certainty in any estimate of the actual cumulative impact than is possible, (2) the value may depend on how much other sources are expected to be contributing to the exposure of the public at any given time, and (3) the value may depend on the degree of benefit being obtained from the products most contributing to the cumulative exposure.

In general, the NRC does not expect the cumulative impact of consumer products to ever reach a level triggering a concern because the policy is designed to prevent unnecessary exposures and to keep individual doses a fraction of the public dose limit and as low as reasonably achievable. The balancing of impacts and benefits inherent in the policy is intended to ensure that only products that present a positive net benefit to society (i.e., justified products) are approved. Although justification of practice is a concept that applies to all practices involving the use of radioactive material, it is particularly relevant to the approval of consumer products. This is primarily because a large portion of, or essentially the entire,

[1] The phrase ''Statement of Policy'' as it is used here refers specifically to Section IV within this notice. Otherwise, the term ''policy'' or ''policy statement'' is being used.

population may be exposed. If large numbers of products were widely distributed for use by the general public, many individuals in the population would be exposed to a multitude of products and potentially receive a significant cumulative dose. The consumer market is also where unjustified products are most likely to be proposed and where any reversal of a decision on a product is most difficult to implement.

Although new products have continued to be developed and approved for use by the general public, the NRC did not need to revise the policy to be more restrictive based on the criterion in paragraph 1 of the policy. This is because, in addition to the application of the justification principle limiting the total number of products approved, some products approved and used in the past have declined in use for various reasons. In addition, as the industry has matured, the amount of radioactive material used in products has often been reduced.

Finally, this update of the policy does not constitute a substantive change to the Commission's basis for decisions in this area. There is no intent to be less restrictive as a result. For all of these reasons, no changes to the Statement of Policy have been made in response to these comments.

*Comment:* One commenter requested more detailed guidance on how the NRC might deny applications based on potential uses; thought that there should be definitions of ''useful,'' ''frivolous,'' ''adornment,'' and ''toy;'' and included suggestions for such definitions. This was discussed in relation to paragraph 3 of the Statement of Policy.

*Response:* The NRC believes that paragraph 3 is clear. Some of the words mentioned by the commenter are used in the policy and will be interpreted in a manner that is consistent with their normal dictionary definitions. Therefore, there is no need to add definitions to the policy.

*Comment:* The same commenter recommended further guidance on what is meant by ''an unusual degree of utility and safety'' with regard to the statement in paragraph 4 of the Statement of Policy that applications of ''off-the-shelf'' items that are subject to mishandling will be approved only if they are found to combine an unusual degree of utility and safety. In this context, the commenter noted that the NRC has in the past rejected products for use under exemption based on the fact that ''the end use of the product could not easily be foreseen.'' The commenter interprets this criterion by stating, ''[w]hat the NRC means by this statement is that the possible misuses of the product can be foreseen.'' The commenter's concerns were that distributors should not be held liable for intentional misuse of products and that products should not be banned because of the possibility of misuse.

*Response:* The words ''an unusual degree of utility and safety'' in paragraph 4 cannot be further specified so as to fit every situation. Rather, each product must be evaluated on a case-by-case basis. Paragraph 4 simply means that if a product appears to have a high likelihood of being mishandled, especially by children, it would be acceptable only if the potential doses are relatively low and the product is unusually beneficial. The NRC notes that products are not banned based solely on the possibility that the product can be mishandled; instead, the probability of misuse and particularly the magnitude of potential doses that could occur as a result of misuse are considered. In any event, distributors are not held liable for the intentional misuse of their products that have been properly distributed.

The policy does not include a specific criterion of being able to foresee the end use of a product. However, the NRC must be able to determine whether the product warrants exemption from licensing and being unable to foresee the end use of a product limits the ability of the NRC to evaluate a number of considerations that *are* addressed in the policy. Under the policy, the likely doses, the probability and severity of accidents and misuse, and the benefits to be obtained from allowing the product to be used under exemption are factors to be considered. These factors cannot be reasonably evaluated if the ultimate uses of the product are not known.

The Commission did, however, include a criterion in the regulations of being able to foresee the end use of a product for approval of specific products proposed for use under the class exemption for self-luminous products. These regulations specifically provide that the NRC may deny an application for a distribution license if the end uses of the product cannot be reasonably foreseen. The commenter is incorrect, however, in the interpretation of this criterion in the regulations that this means that possible misuses of the product can be foreseen. This criterion is not related primarily to misuse but rather to the ability to project how people are likely to be exposed to the radioactive material within or the radiation produced by a product, as well as the conditions under which the product would be used. Self-luminous products in particular have a wide range of potential applications and might easily be widely used for purposes other than those originally intended if not clearly designed for a specific use. This criterion also ensures that the uses (not the occasional misuse) of radioactive material in products are justified. The NRC considers the potential for unintended end uses that may occur on a widespread basis differently from misuse or ''mishandling'' as used in paragraph 4 of the policy, although the NRC recognizes that, in some cases, a product with relatively wide open end uses might also be more likely to be misused.

*Comment:* With regard to paragraph 8 of the Statement of Policy, which discusses the use of other limitations, such as quality control and testing, considered important to health and safety, one commenter suggested that the phrase ''radiation doses to users'' be used in place of ''health and safety.''

*Response:* The commenter did not provide a basis for this suggested change. In addition, the suggested replacement words would not be appropriate, as it is not only doses to users that are relevant but also doses to others who may be exposed at any time throughout the lifecycle of the product.

*Comment:* With regard to subparagraph 9(b), which states that a principal consideration in evaluating proposals for the use of radioactive materials in consumer products is the potential total cumulative radiation dose to individuals in the population who may be exposed to radiation from a number of products, one commenter asked the following questions: What method is used to determine the type and number of products? How are the number and type of products a person is exposed to controlled? Is this possibly misinterpreted to be ''from a number of pathways'' available from the product?

*Response:* The phrase ''from a number of products'' in subparagraph 9(b) is not misinterpreted to be from a number of pathways from the same product but rather concerns exposures from many products. Subparagraph 9(b) covers an overall intent to reduce the likelihood that large segments of the population would receive a significant cumulative radiation dose from being exposed to many exempt products. Because products approved for use under exemptions from licensing are no longer under regulatory control, the number and type of products a person is exposed to cannot be controlled nor determined. Instead, the NRC collects information on the total number of the various types of products distributed and looks broadly at the overall impact

of all products being distributed. A complete reevaluation of the number and type of products a person may be exposed to is not conducted each time a petition is received for an exemption for a new product.

New products expected to be widely distributed and to expose much of the population warrant a more careful weighing of impacts and benefits, and more attention to ensuring that doses will be as low as is reasonably achieveable (ALARA), if the product is approved, than those that are likely to have limited distribution. This helps ensure minimization of the likelihood that large segments of the population would receive a significant cumulative radiation dose from being exposed to many exempt products.

*Comment:* One commenter asked for further information on the criteria used to evaluate public benefit mentioned as a principal consideration in evaluating a product in subparagraph 9(d) of the Statement of Policy.

*Response:* Benefits come in a wide variety of ways and some are not quantifiable. The benefits that may accrue to society from a particular product must be evaluated on a case-by-case basis; this often involves an exercise in judgment. International guidance recognizes that government authorities must make value judgments in determining whether a practice is justified (i.e., the benefit outweighs the harm). Due to the low doses that normally result from products used under exemptions from licensing, it would not be necessary for the benefit of a product to accrue to the individuals exposed; rather, any benefits to society as a whole can be considered.

*Comment:* One commenter asked what criteria are used to determine if children can access a product.

*Response:* Aspects such as product size and likely storage or use locations might be factors affecting accessibility to children. Again, consideration of such matters requires judgment and evaluation on a case-by-case basis. It would not be possible for the NRC to establish generic criteria that could be applied to every situation.

*Comment:* One commenter suggested that subparagraph 10(d) of the Statement of Policy, which concerns the potential of a radionuclide to cause internal doses, be reworded to replace the term ''exposures'' with the term ''doses'' to be consistent with ICRP and National Council on Radiation Protection and Measurements (NCRP) terminology.

*Response:* The NRC agrees that the word ''dose'' is more appropriate than ''exposure'' in some instances in the policy, including in subparagraph 10(d), and has made such changes.

*Comment:* This commenter also recommended that the NRC consider quantification of both external doses and internal doses (from inhalation, ingestion, and dermal absorption) when evaluating new consumer products.

*Response:* The NRC does quantify both external and internal doses when evaluating new consumer products. Much of the policy, however, is intentionally general with respect to the use of the terms ''exposures'' and ''doses.'' These terms cover both external or internal exposures. In subparagraph 9(a), the policy specifies consideration of both external and internal exposures.

*Comment:* One of the comment letters recommended recognition of an AEC/NRC practice that has evolved subsequent to 1965 to require, when practical, labeling or marking of the product, stating that this practice is consistent with the ALARA principle and recognizes the consumers' and others' interest in radiation. This comment letter made the point that labeling of the product and its point-of-sale package enables consumers and others to make informed decisions about acquisition, use, and disposal of the product and also noted an assumption that omission of the recognition of current NRC labeling and marking requirements in the published policy update was an oversight and not a change in policy about informing the public.

*Response:* Labeling was not mentioned in the policy because it is not a factor in considering the initial approval of a product for use under an exemption. Labeling is, however, a consideration in determining requirements for manufacturers and distributors when they subsequently distribute an approved product. Impacts to health and safety are controlled through both constraints in an exemption and the requirements placed on the manufacturers and distributors. Examples of typical distributor requirements are among the topics in paragraph 8 of the Statement of Policy. The NRC agrees that labeling may be an important matter and has added mention of labeling to that paragraph.

The NRC notes that, while labeling was considered an important issue for some products, the agency has not had a uniform policy of always requiring labeling of consumer or other products for the purpose of informing purchasers and others of the presence of radioactive material. In the past, the Commission was more inclined to require labeling when it was a matter of safety (i.e., when a user may reasonably minimize one's exposure with proper handling). This practice is indeed consistent with the ALARA principle. The description in the comment letter of the evolving practice of requiring labeling, when practical, is correct, at least as new exemptions were added. With the recent revisions made to 10 CFR part 40 (May 29, 2013; 78 FR 32310), this practice has been more uniformly applied by adding labeling requirements for some older exemptions from licensing.

The draft Statement of Policy published for public comment has been further revised to clarify points not addressed by the comments. Most importantly, in the area of accident risks in paragraph 2 of the draft Statement of Policy, the upper limit of potential doses to individuals was characterized as approaching a level that could cause immediate effects being negligible. This has been revised to state that the probability of individual doses exceeding a level that could cause effects for which there is a threshold dose must be negligible.

## IV. Statement of Policy

*Products Intended for Use by the General Public (Consumer Products)*

*Criteria for the approval of products containing radioactive material and intended for use by the general public.*

The U.S. Nuclear Regulatory Commission (NRC) issues this Policy Statement to set forth its policy with respect to approval of the use of byproduct material, source material, and special nuclear material in products intended for use by the general public (consumer products) without the imposition of regulatory controls on the consumer-user. This is accomplished by the exemption, on a case-by-case basis, of the possession and use of the approved items from the licensing requirements for byproduct, source, or special nuclear material of the Atomic Energy Act of 1954, as amended, and of the Commission's regulations in 10 CFR part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' 10 CFR part 40, ''Domestic Licensing of Source Material,'' or 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.''

1. At the present time it appears unlikely that the total contribution to the exposure of the general public to radiation from the use of radioactivity in consumer products will exceed a fraction of limits recommended for exposure to radiation from all sources. Information as to total quantities of radioactive materials being used in such products and the number of items being

distributed will be obtained through recordkeeping and reporting requirements applicable to the manufacture and distribution of such products. Periodically, the NRC staff conducts an overall reevaluation of this information to estimate the range of likely doses to the population. If radioactive materials are used in sufficient quantities in products reaching the public so as to raise any question of the combined dose from multiple consumer products becoming a significant fraction of the permissible dose to members of the public, the Commission will, at that time, reconsider its policy on the use of radioactive materials in consumer products.

2. Approval of a proposed consumer product, and adding a new exemption from licensing provision to the regulations, depends upon associated exposures of persons to radiation and the apparent usefulness of the product. In general, risks of exposure to radiation will be considered to be acceptable if it is shown that in handling, use, and disposal of the product, it is unlikely that individuals in the population will receive more than a small fraction, less than a few hundredths, of individual dose limits in the NRC's regulations and as recommended by such groups as the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, and the U.S. Environmental Protection Agency, and that the probability of individual doses exceeding the limits is low. Otherwise, a decision will be more difficult and will require a careful weighing of all factors, including benefits that will accrue or be denied to the public as a result of the Commission's action. Factors that may be pertinent are listed in paragraphs 9 and 10. However, in any case, the probability of individual doses exceeding a level that could cause effects for which there is a threshold dose must be negligible, even in the event of severe accidents involving the numbers of a product that may be present during distribution.

3. Products proposed for distribution will be useful to some degree. Normally, the Commission will not attempt an extensive evaluation of the degree of benefit or usefulness of a product to the public. However, in cases where tangible benefits to the public are questionable and approval of a product may result in widespread use of radioactive material, such as in common household items, the degree of usefulness and benefit to the public may be a deciding factor. In particular, the Commission considers that the use of radioactive material in toys, novelties, and adornments may be of marginal benefit.

4. Applications for approval of ''off-the-shelf'' items that are subject to mishandling, especially by children, will be approved only if they are found to combine an unusual degree of utility and safety.

5. The Commission has approved certain long-standing uses of source material, many of which predate the atomic energy program. These include:

(a) Use of uranium to color glass for certain decorative purposes; and

(b) Thorium in various alloys and products (e.g., gas mantles, optical lenses, and tungsten wire in such things as electric lamps and vacuum tubes) to impart desirable physical properties.

6. The Commission has also approved the use of tritium as a substitute luminous material for the long-standing use of radium for this purpose on watch and clock dials and hands.

7. The Commission has approved additional uses of byproduct and source material in consumer products. These include the following:

(a) Tritium and other radionuclides in electron tubes;

(b) Americium-241 in smoke detectors; and

(c) Thorium and uranium in piezoelectric ceramic, which is used in many electronic products and other consumer products.

8. In approving uses of byproduct, source, or special nuclear material in consumer products, the Commission establishes limits on quantities or concentrations of radioactive materials and, if appropriate, on radiation emitted. In the case of class exemptions covering a class of products, specific safety criteria are included in the regulations, which require the applicant to evaluate many pathways of exposure of the public. In some cases, other limitations considered important to health and safety, such as quality control and testing, are also specified. In most cases, labeling of the product, when practical, or the point-of-sale packaging is required to inform purchasers and others of the presence of radioactive material.

*Principal Considerations With Respect to Evaluation of Products*

9. In evaluating proposals for the use of radioactive materials in consumer products the principal considerations are:

(a) The potential external and internal exposure of individuals in the population to radiation from the handling, use, storage, and disposal of individual products;

(b) The potential total cumulative radiation dose to individuals in the population who may be exposed to radiation from a number of products;

(c) The long-term potential external and internal dose to the general population from the uncontrolled disposal and dispersal into the environment of radioactive materials from products authorized by the Commission; and

(d) The societal benefit that will accrue to or be denied because of the usefulness of the product by approval or disapproval of a specific product.

10. The general criteria for approval of individual products are set forth in paragraph 2. Detailed evaluation of potential doses will take into consideration the following factors, together with other considerations that may appear pertinent in the particular case:

(a) The external radiation levels from the product.

(b) The proximity of the product to human tissue during use.

(c) The area of tissue exposed. A dose to the skin of the whole body would be considered more significant than a similar dose to a small portion of the skin of the body.

(d) Potential of the radionuclides to cause doses from intakes. Materials that result in lower dose when taken into the body would be considered more favorably than materials that result in higher doses from intakes.

(e) The quantity of radioactive material per individual product. The smaller the quantity, the more favorably would the product be considered.

(f) Form of material. Materials with a low solubility in body fluids and the environment will be considered more favorably than those with a high solubility.

(g) Containment of the material. Products that contain the material under very severe environmental conditions will be considered more favorably than those that will not contain the material under such conditions.

(h) Degree of access to product during normal handling and use. Products that are inaccessible to children and other persons during use will be considered more favorably than those that are accessible.

Dated at Rockville, Maryland, this 9th day of January, 2014.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2014–00730 Filed 1–15–14; 8:45 am]

**BILLING CODE 7950–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0009]**

### Maintaining the Effectiveness of License Renewal Aging Management Programs

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory issue summary; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS) that reminds holders of renewed licenses of the requirements to maintain the effectiveness of their aging management programs and activities. The RIS explains that, in general, renewed license holders are obligated to maintain these programs and activities under their quality assurance program used to meet existing regulatory requirements.

**DATES:** Submit comments by February 18, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0009. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** James Keene, telephone: 301–415–1994, email: *James.Keene@nrc.gov,* or Thomas Alexion, telephone: 301–415–1326, email: *Thomas.Alexion@nrc.gov,* both of the Office Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2014–0009 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0009.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS, ''Maintaining the Effectiveness of License Renewal Aging Management Programs,'' is available in ADAMS under Accession No. ML13231A033.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2014–0009 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Discussion

The NRC issues RISs to communicate with stakeholders on a broad range of regulatory matters. This may include communicating staff technical positions on matters that have not been communicated to or are not broadly understood by the nuclear industry.

The NRC staff has developed draft RIS 201X–XX, ''Maintaining the Effectiveness of License Renewal Aging Management Programs,'' to remind holders of renewed licenses of the requirements to maintain the effectiveness of their aging management programs and activities. The RIS explains that, in general, renewed license holders are obligated to maintain these programs and activities under their quality assurance program used to meet existing regulatory requirements. The draft RIS is available electronically under ADAMS Accession No. ML13231A033.

Dated at Rockville, Maryland, this 9th day of January 2014.

For the Nuclear Regulatory Commission.

**Merrilee J. Banic,**

*Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2014–00731 Filed 1–15–14; 8:45 am]

**BILLING CODE 7590–01–P**

## PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

**[Notice–PCLOB–2014–01; Docket No. 2014–0001; Sequence No. 1]**

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, January 23, 2014 from 1:00 p.m.–2:00 p.m. (Eastern standard time).

**PLACE:** Will be announced on the *www.pclob.gov* Web page.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The Privacy and Civil Liberties Oversight Board will meet for the disposition of official business. At the meeting, the Board will be voting on the issuance of its report on the surveillance program operated pursuant to Section 215 of the USA PATRIOT Act and the operations of the Foreign Intelligence Surveillance Court. Additional information on the Board's review of this program, such as the prior public workshop and hearing, is available at *www.pclob.gov.*

### Procedures for Public Observation

The meeting is open to the public. Pre-registration is not required. Individuals who plan to attend and

require special assistance should contact Ms. Susan Reingold, Chief Managing Officer, 202–331–1986, at least 72 hours prior to the meeting date.

**CONTACT PERSON FOR MORE INFORMATION:** Ms. Susan Reingold, Chief Management Officer, 202–331–1986.

Dated: January 13, 2014.

**Diane Janosek,**

*Chief Legal Officer, Privacy and Civil Liberties Oversight Board.*

[FR Doc. 2014–00838 Filed 1–14–14; 11:15 am]

**BILLING CODE 6820–B3–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71283; File No. SR–MIAX–2013–63]**

## Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange LLC To Continue Its Priority Customer Rebate Program on an Ongoing Basis

January 10, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt a Priority Customer Rebate Program. The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to continue its Priority Customer Rebate Program (the ''Program'') on an ongoing basis beyond the current expiration date of December 31, 2013. The Program currently applies to the period beginning December 1, 2013 and ending December 31, 2013.[3] The Program is based on the substantially similar fees of another competing options exchange.[4] Under the Program, the Exchange shall credit each Member the per contract amount set forth in the table below resulting from each Priority Customer [5] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 1400), provided the Member meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange.

| Percentage thresholds of national customer volume in multiply-listed options classes listed on MIAX (monthly) | Per contract credit |
|---|---|
| 0.00%–0.25% | $0.00 |
| Above 0.25%–0.35% | 0.10 |
| Above 0.35%–0.75% | 0.15 |
| Above 0.75%–1.50% | 0.17 |
| Above 1.50% | 0.18 |

The Exchange will aggregate the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Priority Customer Rebate Program as a separate direct payment.

In addition, the rebate payments will be calculated from the first executed contract at the applicable threshold per contract credit with the rebate payments made at the highest achieved volume tier for each contract traded in that month. For example, if Member Firm XYZ, Inc. (''XYZ'') has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of $0.18 for each Priority Customer contract executed in the month of October.

The purpose of the Program is to encourage Members to direct greater Priority Customer trade volume to the Exchange. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

[4] *See* Chicago Board Options Exchange, Incorporated (''CBOE'') Fees Schedule, p. 4. *See also* Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR–CBOE–2013–017).

[5] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* MIAX Rule 100.

markets. As such, marketing fee programs,[6] and customer posting incentive programs,[7] are based on attracting public customer order flow. The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Priority Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incent new participants to send Priority Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing ''rewards'' for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Priority Customer order flow to reach for higher tiers.

The Exchange proposes limiting the Program to multiply-listed options classes on MIAX because MIAX does not compete with other exchanges for order flow in the proprietary, singly-listed products.[8] In addition, the Exchange does not trade any singly-listed products at this time, but may develop such products in the future. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

The Exchange proposes excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400 from the Program. The Exchange notes these exclusions are nearly identical to the ones made by CBOE.[9] Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Priority Customer mini-option volume that they transact. Providing rebates to Priority Customer executions that occur on other trading venues would be inconsistent with the proposal. Therefore, routed away volume is excluded from the Program in order to promote the underlying goal of the proposal, which is to increase liquidity and execution volume on the Exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[10] The Exchange calculates volume thresholds on a monthly basis.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Priority Customer contracts to the Exchange. The resulting increased volume and liquidity will benefit those Members who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes listed on MIAX is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange does not trade any singly-listed products at this time. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is additional competitive burden on non-Priority Customers, the Exchange believes that this is appropriate because the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and

[6] *See* MIAX Fee Schedule, Section 1(b).

[7] *See* NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[8] If a multiply-listed options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of national customer volume in multiply-listed options classes.

[9] *See* CBOE Fee Schedule, page 4. CBOE also excludes QCC trades from their rebate program. CBOE excluded QCC trades because a bulk of those trades on CBOE are facilitation orders which are charged at the $0.00 fee rate on their exchange.

[10] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–63 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–MIAX–2013–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–63 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00688 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71285; File No. SR–CBOE–2013–130]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the PULSe Workstation

January 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 31, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the proposed rule change is to expand on the Exchange's past description of the PULSe workstation. There are no proposed changes to the text of the Exchange's rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to expand on the Exchange's past description of the PULSe workstation. By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange, LLC (''CBSX''), CBOE's stock trading facility. In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and/or stock orders to other U.S. stock exchanges and trading centers [3] (''away-market routing'').[4] To use away-market routing functionality, a CBOE or CBSX Trading Permit Holder must either be a PULSe Routing Intermediary or establish a relationship with a third-party PULSe Routing Intermediary.[5] A ''PULSe Routing Intermediary'' is a CBOE or CBSX Trading Permit Holder that has connectivity to, and is a member of, other options and/or stock exchanges and other trading centers. If a Trading Permit Holder sends an order from a PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering Trading Permit Holder (if the Trading Permit Holder is not a PULSe Routing Intermediary). Among other things, the PULSe workstation also causes CBOE and/or C2 Options Exchange, Incorporated (''C2''), an affiliate of CBOE and CBSX (if the CBOE/CBSX Trading Permit Holder is also a C2 Trading Permit Holder) [6] (CBSX) to be the default destination exchange(s) (trading center) for individually executed marketable option (stock) orders if CBOE and/or C2 (CBSX) is at the national best bid or offer (''NBBO''), regardless of size or time, but allows users to manually override CBOE and/or C2 (CBSX) as the default destination exchange(s) (trading center) on an order-by-order basis or on a global basis.[7] Users may also direct a PULSe Routing Intermediary to use its ''smart router'' functionality and have the capability to send orders between PULSe workstations. Please refer to the CBOE Fees Schedule for a complete listing of PULSe workstation-related fees.

The PULSe workstation is made available to Trading Permit Holders by Signal Trading Systems, LLC (''STS'').[8] Trading Permit Holders may also make the workstation available to their customers (including sponsored users [9]). STS grants licenses to use the PULSE workstation directly to CBOE and CBSX Trading Permit Holders, as well as their customers. STS also has the ability, if it determines to do so, to permit Trading Permit Holders to make the PULSe workstation available to their customers (including sponsored users) through the use of sublicenses. However, whether the PULSe workstation is made available to Trading Permit Holders' customers through a direct license or sublicense, any order routed to CBOE or CBSX through a PULSe workstation must be routed through a Trading Permit Holder or sponsored user (whose orders are sponsored by the Trading Permit Holder). The Trading Permit Holder will also remain responsible for any applicable PULSe fees.

The Exchange is proposing to allow a Trading Permit Holder that licenses the PULSe workstation and makes workstations available to its customers (including sponsored users) to ''co-brand'' the workstations used by those customers.[10] If a Trading Permit Holder elects to co-brand its customers' workstations, the Trading Permit Holder will enter into a co-branding agreement with STS (which supplements the Trading Permit Holder's license agreement to use the PULSe workstation), pursuant to which STS will include the Trading Permit Holder's brand (such as name or logo) on the PULSe workstation screens used by the Trading Permit Holder's customers. There are no fees for co-branding.

The Exchange notes that if a Trading Permit Holder elects to co-brand PULSe workstations, the PULSe logo will continue to be on the workstation screen. The PULSe workstation functionality will not change and will

[3] A ''trading center,'' as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

[4] For a more detailed description of the PULSe workstation and its functionality, *see, e.g.,* Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR–CBOE–2010–051), 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010) (SR–CBOE–2010–100), 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR–CBOE–2011–011 [sic], 65280 (September 7, 2011), 76 FR 56838 (September 14, 2011), 65491 (October 6, 2011), 76 FR 63680 (October 13, 2011) (SR–CBOE–2011–092 [sic]), and 69990 (July 16, 2013), 78 FR 43953 (July 22, 2013) (SR–CBOE–2013–062).

[5] The Exchange notes that the away-market routing functionality is offered as a convenience to Trading Permit Holders and is not an exclusive means available to a Trading Permit Holder to send orders intermarket. With respect to options (stocks), the Exchange also notes that the away-market routing functionality in the PULSe workstation will not displace the provisions of the Options Order Protection and Locked/Crossed Market Plan (Regulation NMS), which will continue to apply in the circumstances described in the Plan (Regulation NMS).

[6] By way of background, the PULSe workstation offers the ability to route orders to any market, including CBOE/CBSX affiliate C2. To the extent a CBOE/CBSX Trading Permit Holder that is also a C2 Trading Permit Holder obtains a PULSe workstation through CBOE, it is not necessary for that Trading Permit Holder to obtain a separate PULSe workstation through C2 to route orders to C2. It is also not necessary for that Trading Permit Holder to utilize the services of a Routing Intermediary to route orders to C2.

[7] Nothing about the PULSe order routing functionality would relieve any TPH that is using the PULSe workstation from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a Trading Permit Holder would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through the PULSe functionality would allow for access to opportunities for price improvement if readily available. Moreover, a Trading Permit Holder would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that would include its use of the PULSe workstation.

[8] STS is an affiliate of CBOE that is jointly owned by CBOE and FlexTrade Systems, Inc. (''FlexTrade''), a technology services provider.

[9] The PULSe workstation may be made available by a Trading Permit Holder to its customers on a pass-through basis (where orders pass through the Trading Permit Holder's systems prior to reaching the Exchange) or a sponsored access basis. To the extent that a Trading Permit Holder makes the workstation available to a customer on a sponsored access basis, the customer would be considered a ''sponsored user,'' and the Trading Permit Holder-customer relationship would be subject to Rule 6.20A. Please note that in the adopting release for Commission Rule 15c3–5 (risk management controls for brokers or dealers with market access), the Commission indicated that a broker-dealer relying on risk management technology developed by third parties should perform appropriate due diligence to help assure the controls are reasonably designed, effective, and otherwise consistent with Rule 15c3–5. Mere reliance on representations of the third party technology developer—even if an exchange or other regulated entity—is insufficient to meet this due diligence standard.

[10] Trading Permit Holders' use of the co-branding service is voluntary.

continue to work as described in this and previous rule filings. No Trading Permit Holder will obtain any additional rights or interest in the PULSe workstation if it elects to use co-branding; STS will remain the sole owner of PULSe (and related PULSe materials and intellectual property). Any Trading Permit Holder that elects to co-brand will remain subject to the terms and conditions of its license agreement with STS. Additionally, neither STS nor its owners (CBOE and FlexTrade) will obtain any rights in a Trading Permit Holder that co-brands or that Trading Permit Holder's intellectual property, other than STS's right to include the Trading Permit Holder's branding on PULSe workstations. Neither STS nor its owners will be involved in any manner in any account of a Trading Permit Holder (or its customers) that uses the PULSe workstation. The Exchange notes that the inclusion of a Trading Permit Holder's branding on the PULSe workstation is not an endorsement or indication of the value of the Trading Permit Holder or its products or services.[11]

The Exchange notes that FlexTrade[12] engages and will engage in business activities in addition to its provision of services to STS and that these activities include providing other technology services to broker-dealers.[13] The Exchange also notes that STS does not currently but may in the future engage in business activities in addition to making the PULSe workstation available, and that these activities may also include the provision of other technology services to broker-dealers. In this regard, the Exchange reiterates the following statements that it made in the initial PULSe rule filing: (i) There are and will continue to be procedures and internal controls in place that are reasonably designed so that FlexTrade does not unfairly take advantage of confidential information related to PULSe in its other business activities and so that STS does not unfairly take advantage of confidential information related to PULSe to the extent that STS engages in any business activities other than providing the PULSe workstation. (ii) The books, records, premises, officers, directors, agents, and employees of STS, with respect to the PULSe workstation, as a facility of CBOE, are deemed to be those of CBOE for purposes of and subject to oversight pursuant to the Act. (iii) Use of the PULSe workstation is optional. Trading Permit Holders (and their customers) are not required to use the PULSe workstation to initiate their orders, and Trading Permit Holders (and their customers) may use any available order-entry system that they select, including ones that they develop themselves for use to initiate their orders. These statements continue to be accurate with the availability of the new co-branding service, which is also optional.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, describing the new ''co-branding'' service available to PULSe Trading Permit Holder users provides more information to the public about PULSe, which information benefits investors and the public. Permitting PULSe Trading Permit Holder users to have their branding included on PULSe workstations that they make available to their customers (including sponsored users) is reasonable given that, as discussed above, Trading Permit Holders are responsible for their customers' orders entered into PULSe workstations, as well as for any applicable PULSe fees related to workstations used and orders entered into those workstations by their customers. Trading Permit Holder users' election to co-brand those workstations is consistent with those responsibilities and provides those users with more freedom in their uses of the PULSe workstations, which perfects the mechanism of a free and open market and a national market system.

The PULSe functionality remains unchanged. If a Trading Permit Holder elects to use the co-branding service, STS would merely add information (such as a name or logo) to the workstation screen and change nothing else with respect to PULSe. PULSe currently competes with similar products offered by other technology providers as well as other options exchanges. Additionally, firms can continue to create their own proprietary front-end order entry software. Given the robust competition for volume among options exchanges, offering additional services on PULSe that may attract order flow is consistent with the above-mentioned goals of the Act.

The Exchange believes that the proposed rule change does not discriminate between Trading Permit Holders because the use by Trading

[11] The Exchange intends to include similar language on the PULSe workstation.

[12] FlexTrade is the sole member of a single member limited liability company named FlexTrade LLC, FlexTrade LLC is a registered broker-dealer, and FlexTrade and FlexTrade LLC each currently makes a front-end order entry workstation named ''FlexTrader'' available. FlexTrade LLC is not a member of CBOE or CBSX.

[13] FlexTrade is not and, currently does not intend to be, registered as a broker-dealer under Section 15(a) of the Act. STS also is not and, currently does not intend to be, registered as a broker-dealer under Section 15(a) of the Act. In this regard, the Exchange reiterates the following statements that it made in the initial PULSe rule filing (*see supra* note 4, Securities Exchange Act Release No. 62286): (a) CBOE is primarily responsible for the marketing of the PULSe workstation. The Exchange notes that any Trading Permit Holder that elects to co-brand must use commercially reasonable efforts to promote PULSe pursuant to the co-branding agreement (although the Trading Permit Holder may offer other products to its customers, and customers may continue to use any other products they choose, for front-end order entry). FlexTrade has no role, and in no event will have any role, in marketing the PULSe workstation. FlexTrade is not, and will continue not to be, party to any agreements with Trading Permit Holders for the PULSe workstation. (b) In contributing services to STS, FlexTrade is limited to providing software and systems technology and maintaining proper technical functioning. CBOE is responsible for ensuring that STS's provision of the PULSe workstation, as a facility of CBOE, meets CBOE's obligations as a self-regulatory organization. (c) Unless it becomes registered as a broker-dealer under Section 15(a) of the Act, neither STS nor FlexTrade will hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage accounts. These statements continue to be accurate with the availability of the new co-branding service. Should STS or FlexTrade seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act, 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

Permit Holders of co-branding is completely voluntary and available as a convenience to all Trading Permit Holders that elect to use the PULSe workstation. The Exchange also believes it is reasonable to offer the co-branding service only to Trading Permit Holder PULSe users, because those users make PULSe available to their customers. Such customers do not make the PULSe workstation available to others, and are not responsible for the use of PULSe by other parties, and thus providing the co-branding service to customers of Trading Permit Holders would not be appropriate.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange will make the co-branding service described in this rule filing available to all Trading Permit Holders that use PULSe on the same terms and conditions, and use of the co-branding service is completely voluntary. As discussed above, the Exchange believes it is reasonable to not offer the co-branding service to non-Trading Permit Holder customers of PULSe.

Trading Permit Holders (and their customers) will continue to have the flexibility to use any order-entry technology they choose to access the Exchange and may elect not to use the co-branding service if they elect to use PULSe. The PULSe functionality remains unchanged and continues to be made available as described in this and previous rule filings. The Exchange is merely offering Trading Permit Holder that use PULSe the opportunity to add branding to the workstation screens used by their customers (including sponsored users) for which workstations and orders entered through those workstations the Trading Permit Holders are responsible. This service would only add information to the workstation screen and change nothing else with respect to PULSe. The Exchange's offering of the co-branding service is another effort to have PULSe compete with the numerous other order-entry systems available in the marketplace. If Trading Permit Holders believe that other order-entry systems available in the marketplace are more beneficial than PULSe, then Trading Permit Holders may simply use those products instead. Orders sent to the Exchange for execution by Trading Permit Holders that use PULSe, whether they co-brand or not, will receive no preferential treatment.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. CBOE will be offering a service with respect to PULSe that is available or could be made available on similar products throughout the industry. Market participants can also develop their own proprietary products with the same functionality, which they can offer to their customers. Market participants are also able to become Trading Permit Holders and license PULSe, and elect to co-brand PULSe workstations for their customers, if they believe the new co-branding service makes CBOE and PULSe more attractive.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–130 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–CBOE–2013–130. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–130 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00690 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71276; File No. 4–669]**

## Self-Regulatory Organizations; Topaz Exchange, LLC (d/b/a ISE Gemini); Order Declaring Effective a Minor Rule Violation Plan for Topaz Exchange, LLC

January 9, 2014.

On November 14, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'') filed with the Securities and Exchange Commission

(''Commission'') a proposed minor rule violation plan (''MRVP'') pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on November 29, 2013.[3] The Commission received no comments on the proposal. This order declares the Exchange's proposed MRVP effective.

The Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) of the Act,[4] which requires a self-regulatory organization (''SRO'') to promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d-1(c)(2) under the Act,[6] the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The Exchange proposed to include in its MRVP the procedures and violations currently included in Exchange Rule 1614 (''Imposition of Fines for Minor Rule Violations''), which had been incorporated by reference from the International Securities Exchange's rule book.[7]

According to the Exchange's proposed MRVP, under Exchange Rule 1614, the Exchange may impose a fine (not to exceed $2,500) on any Member, or person associated with or employed by any Member, with respect to any rule listed in Exchange Rule 1614(d).[8] The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

Upon the Commission's declaration of effectiveness of the Exchange's MRVP, the Exchange will provide the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of disposition.[9]

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[11] which require that the exchange enforce compliance with, and provide appropriate discipline for violations of, Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Exchange Rule 1614, the Commission believes that Exchange Rule 1614 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[12]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[13] because the MRVP strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 1614. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 1614 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

*It is therefore ordered,* pursuant to Rule 19d–1(c)(2) under the Act,[14] that the proposed MRVP for Topaz Exchange, LLC (d/b/a ISE Gemini), File No. 4–669, be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00686 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 70927 (November 22, 2013), 78 FR 71689 (''Notice'').

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[6] 17 CFR 240.19d–1(c)(2).

[7] On July 26, 2013, the Exchange received its grant of registration, which included approval of the rules that govern the Exchange. *See* Securities Exchange Act Release No. 70050, 78 FR 46622 (August 1, 2013) (File No. 10–209).

[8] *See* Notice, *supra* note 3.

[9] The Exchange attached a sample form of the quarterly report with its submission to the Commission.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[12] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[13] 17 CFR 240.19d–1(c)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(44).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71284; File No. SR–BATS–2014–002]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Applicability of the Competitive Liquidity Provider Program

January 10, 2014.

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 January 3, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 filed a proposal to amend Interpretation and Policy .02 to Rule 11.8, entitled ''Competitive Liquidity Provider Program.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Interpretation and Policy .02 to Rule 11.8 in order to allow both corporate issues and ETPs[3] listed on the Exchange (collectively, ''CLP Securities'') to participate in the CLP program (the ''Program'') for a maximum of three years instead of two years. Currently, a CLP Security is eligible to participate in the Program unless and until such CLP Security has: (i) Had a consolidated average daily volume (''CADV'') of equal to or greater than 2 million shares for two consecutive calendar months; or (ii) where the CLP Security has been subject to the Program for two years. The Exchange is proposing to extend the period during which a CLP Security is eligible for participation in the Program from two years to three years and to make the necessary corresponding changes so that a CLP Security will still be ineligible for participation in the Program where it has a CADV of equal to or greater than 2 million shares for two consecutive calendar months.

When the Program was first proposed,[4] the Exchange did not want to allow CLP Securities to participate in the Program indefinitely and, thus, needed to create a threshold for CLP Securities at which point they would no longer be eligible for the Program. The Exchange decided to implement a two year limit on the basis that it was a reasonable length of time during which the Exchange could evaluate the Program and its listings program generally. Since the Program was implemented, the Program has been at least partly responsible for attracting and retaining the listing of certain CLP Securities on the Exchange and the Exchange believes that allowing CLP Securities to continue to participate in the Program is integral to continue to expand the listings program and to retain existing listings. As such, the Exchange is proposing to extend the maximum eligibility window for CLP Securities to three years from the date of the CLP Security has been subject to the Program. The Exchange is proposing that these changes apply both to newly listed CLP Securities and CLP Securities already listed on the Exchange, meaning that any CLP Securities currently listed on the Exchange will also be eligible for participation in the Program for an additional year.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[7] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Exchange believes that the proposal is not unfairly discriminatory because it is merely a continuation of the Program as it is implemented today and will apply equally to all participating CLP Securities and issuers. The Exchange believes that lengthening the period during which a CLP Security is eligible for the Program will continue to encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

The proposal is designed to maintain and further enhance the Exchange's competitiveness as a listing venue and its market quality for Exchange-listed securities. The Exchange believes that the proposed change will enhance market quality by extending the period of eligibility for CLP Securities to participate in the Program, which will further incent Exchange Market Makers to register as CLPs and quote in Exchange-listed securities, thus maintaining or improving the quality of quoting in Exchange-listed securities subject to the Program and helping to reduce imbalances in Exchange auctions. The Exchange also believes that the proposed change will further assist the Exchange in competing as a listing venue by providing an even longer window during which the Program is applied and competitive quoting is incented on the Exchange. Accordingly, the Exchange believes that the proposal will enhance the existing Program for CLP Securities subject to the Program, which will, in turn, provide issuers of CLP Securities with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.[8]

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in paragraph (d)(2) of Interpretation and Policy .02 to Rule 11.8, ETPs means any-Exchange listed security that is listed on the Exchange pursuant to Rule 14.11.

[4] *See* Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051).

[5] The first Exchange-listed securities began participating in the Program on February 9, 2012 and, under the current rules, would be ineligible for participation in the Program beginning on February 9, 2014.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

Exchange believes that the proposal will extend the period during which CLP Securities will be eligible to participate in the Program and which will enhance the result of the Program, thereby enhancing competition both among listing venues as well as among participants in the CLP Program.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2014–002 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 No. SR–BATS–2014–002. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2014–002 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00689 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71286; File No. SR–BX–2013–065]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Under Exchange Rule 7018(a) With Respect to Transactions in Securities Priced at $1 per Share or More

January 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 the fee schedule under Exchange Rule 7018(a) with respect to transactions in securities priced at $1 per share or more. The Exchange will implement the proposed rule change on January 2, 2014.

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to adopt a new tier with respect to the rebates it pays for orders that access liquidity in securities priced at $1 or more. The new tier applies to members that are active in both the NASDAQ OMX BX Equities System (the ''BX Equities System'') and BX Options. As such, the tier is similar to various tiers that have previously been introduced by the NASDAQ Stock Market for members of that exchange that are active in both the NASDAQ Market Center and the NASDAQ Options Market, as well as a tier with respect to charges of providing liquidity that was introduced by the Exchange in December 2013.[3] Under the proposed tier, a member will receive a credit of $0.0013 per share executed when accessing liquidity[4] if the member (i) has a daily average volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more of its BX Equities System market participant identifiers (''MPIDs''), and (ii) adds and/or removes liquidity of 40,000 or more contracts per day during the month through BX Options.

The proposed tier recognizes the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, the Exchange believes that a pricing incentive that encourages market participant activity in BX Options will also support price discovery and liquidity provision in the BX Equities System.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Sections 6(b)(4) and (b)(5) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The change with respect to a new tier for members active in both the BX Equities System and BX Options is reasonable because it reflects the availability of a price reduction for members that support liquidity on both markets. The change is consistent with an equitable allocation of fees because the pricing tier requires significant levels of activity in both markets, and is therefore consistent with volumetric pricing tiers at BX and many other exchanges, which offer better pricing to members that make significant use of an Exchange's services. The change is also consistent with an equitable allocation of fees because activity in BX Options also supports price discovery and liquidity provision in the BX Equities System due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, the new tier has the potential to reduce fees for a wider range of market participants by introducing a new means of qualifying for a higher credit for accessing liquidity. The change is not unreasonably discriminatory because market participants may qualify for a comparable credit without participating in BX Options through another volumetric pricing tier that BX offers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[7] BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the change with respect to a new pricing tier for members active in the Exchange's cash equities and options markets enhances the Exchange's competitiveness by reducing fees. However, because competitors may readily change their own prices in response, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–065 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–BX–2013–065. 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

[3] *See* NASDAQ Rule 7018(a); Securities Exchange Act Release No. 71055 (December 12, 2013), 78 FR 76689 (December 18, 2013) (SR–BX–2013–059).

[4] As with other rebate tiers, the proposed tier does not apply to an order that executes against a midpoint pegged order, because the accessing order receives price improvement.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4), (5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2013–065 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00691 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71282; File No. SR–FINRA–2013–046]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to TRACE Reporting and Dissemination of Transactions in Additional Asset-Backed Securities

January 10, 2014.

On November 13, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to TRACE reporting and dissemination of transactions in additional asset-backed securities. The proposed rule change was published for comment in the **Federal Register** on November 26, 2013.[3] The Commission received one comment on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 10, 2014. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment received. The proposed rule change would, among other things, provide for post-trade transparency of transactions in certain asset-backed securities.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 24, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00687 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70906 (November 20, 2013), 78 FR 70602 (''Notice'').

[4] *See* letter from Chris Killian, Managing Director, Securitization, SIFMA to Elizabeth M. Murphy, Secretary, Commission, dated December 17, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71287; File No. SR–FINRA–2014–001]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

January 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 11, 2015. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

On July 1, 2011, the SEC issued an Order granting temporary exemptive relief (the ''Temporary Exemptions'') from compliance with certain provisions of the Exchange Act in connection with the revision, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[4] of the Exchange Act definition of ''security'' to encompass security-based swaps.[5] Consistent with the Commission's action, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,[6] which, with certain exceptions, is intended to temporarily limit the application of FINRA rules[7] with respect to security-based swaps, thereby helping to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act.[8]

The Commission, noting the need to avoid a potential unnecessary disruption to the security-based swap market in the absence of an extension of the Temporary Exemptions, and the need for additional time to consider the potential impact of the revision of the Exchange Act definition of ''security'' in light of recent Commission rulemaking efforts under Title VII of the Dodd-Frank Act, issued an Order extending the expiration date of the Temporary Exemptions until February 11, 2014.[9] The Commission noted that extending the Temporary Exemptions would facilitate a coordinated consideration of these issues with the relief provided pursuant to FINRA Rule 0180. In conjunction with the Commission's action, on March 18, 2013, FINRA filed for immediate effectiveness a proposed rule change to extend the expiration date of FINRA Rule 0180 to February 11, 2014.[10] In establishing Rule 0180, and in extending the rule's expiration date,[11] FINRA noted its intent, pending the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities, to align the expiration date of FINRA Rule 0180 with the termination of relevant provisions of the Temporary Exemptions.

The Commission's rulemaking and development of guidance in relation to security-based swap activities is ongoing. As such, FINRA believes it is appropriate and in the public interest, in light of the Commission's goals as set forth in the Exemptive Release and the Temporary Exemptions Extension Release, to extend FINRA Rule 0180 for a limited period, to February 11, 2015, so as to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act. As noted in the FINRA Rule 0180 Notice of Filing, FINRA will amend the expiration date of Rule 0180 in subsequent filings as necessary such that the expiration date will be coterminous with the termination of relevant provisions of the Temporary Exemptions.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be February 11, 2014.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release and in the Temporary Exemptions Extension Release, the proposed rule change will help to avoid undue market disruption that could result if FINRA Rule 0180 expires before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change would prevent undue market disruption that would otherwise result if security-

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] *See* Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of ''Security'' To Encompass Security-Based Swaps, and Request for Comment) (the ''Exemptive Release''). The term ''security-based swap'' is defined in Section 761 of the Dodd-Frank Act. *See also* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

[6] *See* Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–033) (''FINRA Rule 0180 Notice of Filing''). *See also* Securities Exchange Act Release No. 66156 (January 13, 2012), 77 FR 3027 (January 20, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2012–004) (extending the expiration date of FINRA Rule 0180 to January 17, 2013); Securities Exchange Act Release No. 68471 (December 19, 2012), 77 FR 76113 (December 26, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2012–056) (extending the expiration date of FINRA Rule 0180 to July 17, 2013); Securities Exchange Act Release No. 69262 (April 1, 2013), 78 FR 20708 (April 5, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2013–019) (extending the expiration date of FINRA Rule 0180 to February 11, 2014).

[7] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[8] In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act's antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members' activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). *See also* paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

[9] *See* Securities Exchange Act Release No. 68864 (February 7, 2013), 78 FR 10218 (February 13, 2013) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment) (''Temporary Exemptions Extension Release''). *See also* Securities Exchange Act Release No. 68753 (January 29, 2013), 78 FR 7654 (February 4, 2013) (Extension of Exemptions for Security-Based Swaps) (extending the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933 (the ''Securities Act''), the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act).

[10] *See* Securities Exchange Act Release No. 69262 (April 1, 2013), 78 FR 20708 (April 5, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2013–019).

[11] *See* FINRA Rule 0180 Notice of Filing. *See also* footnote 10.

[12] 15 U.S.C. 78*o*–3(b)(6).

based swaps were, by virtue of the expansion of the Act's definition of ''security'' to encompass security-based swaps, subject to the application of all FINRA rules before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–001 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–FINRA–2014–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–001 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–00706 Filed 1–15–14; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 8596; No. FMA–2014–2]**

## Determination Under the Foreign Missions Act

Section 209(a) of the Foreign Missions Act (22 U.S.C. 4309(a)) (hereinafter ''the Act'') authorizes the Secretary of State to make any provision of the Act applicable with respect to international organizations to the same extent that it is applicable with respect to foreign missions when he determines that such application is necessary to carry out the policy set forth in section 201(b) of the Act (22 U.S.C. 4301(b)) and to further the objectives set forth in section 204(b) of the Act (22 U.S.C. 4304(b)).

Section 209(b) of the Act (22 U.S.C. 4309(b)) defines ''international organization'' as (1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. § 288 *et seq.*) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; and (2) an official mission (other than a U.S. mission) to such a public international organization, including any real property of such an organization or mission and including the personnel of such an organization or mission.

Pursuant to the authority vested in the Secretary of State by the Act, and delegated by the Secretary of State to me as the Under Secretary of State for Management in Delegation of Authority No. 198, dated September 16, 1992, I hereby determine that the application of all provisions of the FMA to international organizations, as that term is defined in section 209(b), is necessary to facilitate the secure and efficient operation of public international organizations and the official missions to such organizations, to assist in obtaining benefits, privileges and immunities for these organizations, and to require their observance of corresponding obligations in accordance with international law. It will also further the objectives set forth in section 204(b) of the Act as it will assist in protecting the interests of the United States.

Furthermore, I determine that the principal offices of an international organization used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and the site and any

building on such site which is used for such purposes constitute a ''chancery'' for purposes of section 206 of the Act (22 U.S.C. 4306).

This action supersedes the determinations under the Foreign Missions Act relating to permanent missions to the United Nations made by the Acting Secretary of State on December 7, 1982, and by the Secretary of State on June 6, 1983.

Dated: January 8, 2014.

**Patrick F. Kennedy,**

*Under Secretary for Management.*

[FR Doc. 2014–00623 Filed 1–15–14; 8:45 am]

**BILLING CODE 4710–35–P**

## DEPARTMENT OF STATE

**[Public Notice 8597; No. FMA–2014–1]**

## Designation and Determination Under the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States, including the Foreign Missions Act (codified at 22 U.S.C. 4301–4316) (hereinafter ''the Act''), and delegated by the Secretary to me as the Under Secretary of State for Management in Delegation of Authority No. 198, dated September 16, 1992, and after due consideration of the benefits, privileges, and immunities provided to missions of the United States abroad, as well as matters related to the protection of the interests of the United States, I hereby designate as a benefit for purposes of the Act: exemption from taxes associated with the purchase, ownership, and disposition of real property, other than such as represent payment for specific services rendered (hereinafter collectively referred to as ''real estate taxes'')—including, but not limited to, annual property tax, recordation tax, transfer tax, and the functional equivalent of deed registration charges and stamp duties—by a foreign mission on the basis of the property's authorized use for diplomatic or consular purposes or by an international organization on the basis of the property's authorized use for the official business of the organization.

Exemption from real estate taxes on the basis of a property's authorized use for diplomatic or consular purposes or for the official business of an international organization is available to a foreign mission or international organization only with respect to property authorized by the Department of State's Office of Foreign Missions (OFM) for use as:

1. the premises of a bilateral diplomatic mission or consular post, headed by a career consular officer, that is owned by the respective foreign government or the head of the mission or consular post;

2. the premises of a consular post, headed by an honorary consular officer, that is owned by the respective foreign government;

3. the primary residence of the head of a bilateral diplomatic mission or a career head of a consular post, that is owned by the respective foreign government or the head of the mission or consular post;

4. the primary residence of a member or members of the staff of a bilateral diplomatic mission or career consular post, that is owned by the respective foreign government;

5. the premises of the Organization of American States (OAS) or the United Nations (UN), that is owned by the respective organization;

6. the primary residence of the head (Secretary General) of the OAS Secretariat or the UN Secretariat, that is owned by the respective organization;

7. the primary residence of a member or members of the staff of the OAS or the UN, that is owned by the respective organization;

8. the premises of a permanent mission to the OAS or the UN, that is owned by the respective foreign government;

9. the primary residence of a principal representative or resident representative of a permanent mission to the OAS or the UN with a rank of ambassador or minister plenipotentiary, that is owned by the respective foreign government;

10. the primary residence of a member or members of the staff of a permanent mission to the OAS or the UN, that is owned by the respective foreign government;

11. the premises of an observer mission to the OAS or the UN of a state recognized by the United States, that is owned by the respective foreign government;

12. the primary residence of a principal representative or resident representative of an observer mission to the OAS or the UN of a state recognized by the United States with a rank of ambassador or minister plenipotentiary, that is owned by the respective foreign government;

13. the primary residence of a member or members of the staff of an observer mission to the OAS or the UN of a state recognized by the United States, that is owned by the respective foreign government;

14. the premises of an international organization designated under the International Organization Immunities Act (IOIA), other than the OAS or UN, that is owned by the respective organization and is located in the District of Columbia;

15. the primary residence of the head of an international organization designated under the IOIA, other than the OAS or UN, that is owned by the respective organization and is located in the District of Columbia;

16. the primary residence of a member or members of the staff of an international organization designated under the IOIA, other than the OAS or UN, that is owned by the respective organization and is located in the District of Columbia;

17. a residence used for temporarily lodging representatives or employees of a government of a state recognized by the United States, who visit the United States for bilateral or multilateral diplomatic or consular purposes, that is owned by the respective foreign government; or

18. another category of property authorized by OFM.

Property that is owned by a foreign government or international organization for the purpose of constructing or renovating facilities and that OFM has authorized for use for any of the purposes described above is eligible for an exemption from real estate taxes, provided that OFM authorized the acquisition of such property.

I similarly designate as a benefit for purposes of the Act an exemption from real estate taxes on mission premises and residences described above that are in the custody or control of the United States pursuant to 22 U.S.C. 4305(c).

I determine that exemption from real estate taxes on the basis of a property's authorized use for diplomatic or consular purposes or for the official business of an international organization shall be provided on such terms and conditions as OFM may approve. The manner in which such benefits shall be extended by states, counties, municipalities, and territories shall also be subject to such terms and conditions as OFM may approve.

Following are the current terms and conditions governing the provision of exemptions from real estate taxes to foreign missions and international organizations on the basis of a property's authorized use for diplomatic or consular purposes or for the official business of an international organization:

- The determination of a foreign mission or international organization's entitlement to an exemption from real estate taxes associated with a property of a type described above, on the basis of the property's authorized use for

diplomatic or consular purposes, or for the official business of an international organization, is committed to the sole discretion of the Department of State. Such determinations are communicated by letter from OFM to the relevant state, county, municipal or territorial revenue authorities.

- All such letters will be signed by the Director of OFM's Office of Diplomatic Property, Tax, Services and Benefits (OFM/PTSB), or a successor office.
- Such letters serve as official notice to the relevant state, county, municipality, or territory that the described property or transaction is or is not entitled to an exemption from real estate taxes on the basis of the property's authorized use for diplomatic or consular purposes or for the official business of an international organization.
- States, counties, municipalities, and territories are prohibited from extending to a foreign mission or international organization an exemption from real estate taxes associated with a property on the basis of the property's authorized use for diplomatic or consular purposes or for the official business of the international organization, except on the basis of written authorization from OFM.
- Conversely, on the basis of a letter as described above, states, counties, municipalities, and territories are required to extend to a foreign mission or international organization an exemption from real estate taxes to which OFM determines a foreign mission or international organization is entitled. If a state, county, municipality or territory has concerns regarding the extension of such exemption benefits, it should raise the matter directly with OFM.
- Unless otherwise determined by OFM, the effective date of OFM's authorization of an exemption from real estate taxes is the date the property deed in question is signed or transferred.
- States, counties, municipalities, and territories may establish additional procedures to ensure the proper extension of such exemption benefits, provided that:

○ such procedures, including the establishment and use of any forms, serve only to facilitate the state, county, municipality, or territory's extension of exemption benefits to a foreign mission or international organization and not as a means to determine the foreign mission's or international organization's entitlement to the exemption benefit associated with a property on the basis of the property's authorized use for diplomatic or consular purposes or for the official business of the international organization, which determination is committed to the sole discretion of the Department of State; and

○ the state, county, municipality, or territory obtain written approval from the Director of OFM/PTSB confirming that the proposed procedural requirements do not violate or infringe on any benefits, privileges, or immunities enjoyed by foreign missions or international organizations.

Finally, I further determine that any state or local laws to the contrary are hereby preempted.

The exemption from real estate taxes provided by this designation and determination shall apply to taxes that have been or will be assessed against any foreign mission or international organization with respect to property subject to this determination and shall nullify any existing tax liens with respect to any covered property. This determination shall not require the refund of any taxes previously paid by any foreign mission or international organization regarding such property. These actions are not exclusive and are independent of alternative legal grounds that support the tax exemption afforded herein.

The actions taken in this Designation and Determination are necessary to facilitate relations between the United States and foreign states, protect the interests of the United States, adjust for costs and procedures of obtaining benefits for missions of the United States abroad, and carry out the policy set forth in 22 U.S.C. 4301(b).

This action supersedes the Designation and Determination under the Foreign Missions Act made by the Deputy Secretary of State for Management and Resources on June 23, 2009.

Dated: January 8, 2014.

**Patrick F. Kennedy,**

*Under Secretary for Management.*

[FR Doc. 2014–00735 Filed 1–15–14; 8:45 am]

**BILLING CODE 4710–35–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting via teleconference of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues.

**DATES:** The teleconference is scheduled for Monday, February 10, 2014, starting at 8:00 a.m. PST/11:00 a.m. EST. The public must make arrangements by February 5, 2014, to present oral statements at the meeting.

**ADDRESSES:** N/A.

**FOR FURTHER INFORMATION CONTACT:** Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or email at *ralen.gao@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 2), notice is given of an ARAC Subcommittee meeting via teleconference to be held February 10, 2014.

The agenda for the meeting is as follows:

- Flight Controls Working Group Report

Participation is open to the public, but will be limited to the availability of teleconference lines.

To participate, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** by email or phone for the teleconference call-in number and passcode. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are participating as a public citizen, please indicate so. Anyone calling from outside the Arlington, VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by February 5, 2014, to present oral or written statements at the meeting. Written statements may be presented to the Subcommittee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC on January 10, 2014.

**Lirio Liu,**

*Designated Federal Officer.*

[FR Doc. 2014–00700 Filed 1–15–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2014–01]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before February 5, 2014.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2013–0982 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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:** Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 10, 2014.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### PETITION FOR EXEMPTION

Docket No.: FAA–2013–0982
Petitioner: Hartzell Propeller Inc.
Section of 14 CFR Affected:
14 CFR part: 45.13(a)(4)
Description of Relief Sought:

The petitioner is requesting relief from having type certificate markings on the blades of propellers.

[FR Doc. 2014–00699 Filed 1–15–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2014–06]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before January 27, 2014.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2002–13734 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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:** Keira Jones (202) 267–4024, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 10, 2014.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### PETITION FOR EXEMPTION

Docket No.: FAA–2002–13734

Petitioner: Republic Airlines, Shuttle America Corporation and Chautauqua Airlines

Section of 14 CFR Affected:

14 CFR 93.123

Description of Relief Sought:

Republic Airlines and Shuttle America Corporation seek authorization for Shuttle America to use Slot 1497 for continued service to DCA-Madison for

the reasons stated in Republic's Exemption No. 7370G.

[FR Doc. 2014–00701 Filed 1–15–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Announcement of Charter Renewal of the Transit Advisory Committee for Safety (TRACS)

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of charter renewal.

**SUMMARY:** The Federal Transit Administration (FTA) announces the charter renewal of the Transit Advisory Committee for Safety (TRACS), a Federal Advisory Committee established by the U.S. Secretary of Transportation (the Secretary) in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the Secretary and the Federal Transit Administrator on matters relating to the safety of public transportation systems. This charter will be effective for two years from the date of this **Federal Register** notice.

*Contact Information:* For further information contact Thomas Littleton, TRACS Designated Federal Official, Associate Administrator, FTA Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, 4th Floor, East (E45–316), Washington, DC 20590, (202) 366–9239; or Bridget Zamperini, FTA Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE., 4th Floor, East (E45–310), Washington, DC 20590, (202) 366–0306.

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). As noted above, TRACS is a Federal Advisory Committee established to provide information, advice, and recommendations to the Secretary and the Administrator of the Federal Transit Administration on matters relating to the safety of public transportation systems. With the renewed charter, TRACS is renamed as the Transit Advisory Committee for Safety (for continuity the acronym will remain TRACS). The term ''RAIL'' is omitted from the original title of the advisory committee to reflect the broader current mandate of TRACS to advise on all public transportation safety matters. In addition, TRACS is increased to approximately 29 members representing a broad base of expertise necessary to discharge its responsibilities. Please see the TRACS Web site for additional information at *http://www.fta.dot.gov/about/13099.html.*

**Peter Rogoff,**

*Administrator.*

[FR Doc. 2014–00667 Filed 1–15–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2013–0010]**

### Urbanized Area Formula Program: Final Circular

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final circular

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance, in the form of a Circular, to assist recipients in their implementation of the Urbanized Area Formula Program. The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance on the program's administration and the grant application process.

**DATES:** *Effective Date:* The effective date of the Circular is January 16, 2014.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Adam Schildge, Office of Project Management, Federal Transit Administration, 1200 New Jersey Ave. SE.; (202) 366–0778 or *Adam.Schildge@dot.gov.* For legal matters, Rita Maristch or Candace Key, Office of Chief Counsel, same address; (215) 656–7100; (202) 366–4011, respectively, or *Rita.Maristch@dot.gov; Candace.Key@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Availability of Final Circular

This notice provides a summary of changes to the Urbanized Area Formula Program Circular 9030.1E, and responses to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at *www.fta.dot.gov*, and in the docket, at *www.regulations.gov.* Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865.

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### I. Overview

FTA is updating its Circular 9030.1D, ''Urbanized Area Formula Program: Program Guidance and Application Instructions,'' last revised on May 10, 2010, to incorporate changes made to the section 5307 Urbanized Area Formula Program (section 5307 Program) by the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141), signed into law on July 6, 2012. The section 5307 Program authorizes Federal financial assistance for public transportation in urbanized areas for capital and planning projects, job access and reverse commute projects, and, in some cases, operating assistance. This notice provides a summary of changes to FTA Circular 9030.1D and addresses comments received in response to the proposed Circular that was published in the **Federal Register** on April 22, 2013. 78 FR 23818. The final Circular, 9030.1E, ''Urbanized Area Formula Program: Program Guidance and Application Instructions,'' becomes effective upon publication, and will supersede FTA Circular 9030.1D.

MAP–21 made several significant changes to the laws authorizing the Federal transit programs. Many of the changes have cross-cutting impacts across all of FTA's programs and further several important goals of the Department of Transportation (DOT). Most notably, MAP–21 grants FTA significant new authority to oversee and regulate the safety of public transportation systems throughout the United States. The Act also puts new emphasis on restoring and replacing the Nation's aging public transportation infrastructure by establishing a new State of Good Repair Formula Program and new asset management requirements. In addition, it aligns Federal funding with key performance goals and tracks recipients' progress towards these goals. Finally, MAP–21 improves the efficiency of program administration through program consolidation and streamlining. For example, job access and reverse commute activities, previously included in a separate Federal transit assistance

program, have been consolidated in the section 5307 Program and the section 5311 Formula Grants for Rural Areas Program.

The final Circular reflects changes in the law to the section 5307 Program and, where applicable, changes to other programs and provisions. The final Circular has also been reorganized and revised to improve clarity and to achieve consistency with FTA's other guidance documents. FTA expects the additional updates and clarification provided by the final Circular to provide recipients with the guidance and direction they need to properly apply for funding and comply with the requirements of the section 5307 Program.

The final Circular will apply to all new grants made on or after the effective date of the final Circular with FY 2013 or later funds. The requirements of the section 5307 Program under the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59 (2005) and the guidance provided in the old Circular, 9030.1D, will continue to apply to grants made with FY 2012 or earlier funds after the effective date of the final Circular. In accordance with FTA's Master Agreement, MAP–21 cross cutting provisions will apply to each new grant, despite funding year.

**Chapter-by-Chapter Analysis**

*A. General Comments*

A total of 58 commenters responded to the proposed Circular. The majority of the comments received pertained to eligibility and other requirements for job access and reverse commute projects. A number of commenters made suggestions or recommendations that were outside the scope of this Circular. For example, comments were made about the process for recipient oversight assessments, and reporting requirements for the National Transit Database. In addition, a number of commenters suggested that FTA reference updated FTA guidance documents on others issues in this Circular, requested minor clarifications to statements or terms that did not impact the substance of the Circular, and commented on other issues that were not directly relevant to section 5307 program requirements.

Several commenters suggested that FTA clarify language regarding particular points of guidance provided in the previous Circular that had either been misinterpreted by grantees or pertain to issues that arise under relatively uncommon circumstances. Where possible, FTA has made edits to clarify the language in the Circular. For example, FTA revised language that provided guidance on the provision which allows up to 10 percent of an apportionment to be used for paratransit operations as a capital project. This provision does not preclude paratransit operations from being eligible to receive additional funding for operating expenses under standard operating expense eligibilities. In other cases, FTA inserted clarifying language from other circulars when a cross-cutting provision was mentioned.

*B. Chapter I—Introduction and Background*

Chapter I of the final Circular is an introductory chapter that covers general information about FTA, provides a brief history of the 5307 Program (49 U.S.C. 5307), including changes MAP–21 made to the section 5307 Program, and defines terms applicable across all FTA programs. The final Circular includes the following statutory definitions:

- Associated transit improvements (previously ''transit enhancements'')
- Bus rapid transit (BRT) system
- Commuter highway vehicle or vanpool vehicle
- Disability
- Fixed guideway
- Job access and reverse commute project
- Low income individual
- Private provider of public transportation by vanpool
- Public transportation
- Regional transportation planning organization
- Senior

Definitions have also been added to this section for terms that are unclear or currently undefined in Federal transit law, regulation or guidance. Where applicable, we have used the same definitions found in statute, rulemakings or other circulars to ensure consistency.

There were several comments that suggested revisions to the definitions section. One commenter suggested that FTA revise the definitions of ''capital asset'' and ''operating expenses'' to account for variations of these definitions in State laws. FTA believes that the definition of terms must be applied uniformly to its Federal transit assistance programs for purposes of administration and, therefore, declines to accept the suggested revisions. Another commenter suggested that FTA clarify whether the definition of ''force account'' requires grantees to use force accounts for work completed by in-house staff in the process of supervising contractor work. FTA clarified the definition of force account to state that force account does not include project administration, preventive maintenance, mobility management, or other non-traditional capital project types. FTA has also included a reference to Circular 5010.1D, ''Grant Management Requirements,'' which provides additional guidance on force accounts.

*C. Chapter II—Program Overview*

Chapter II covers general information about the 5307 Program, including revisions to the section entitled ''Statutory Authority,'' to add references to MAP–21. As a result of MAP–21, section 5307 Program funds are available for certain new and redefined activities, including job access and reverse commute projects, operating costs, and associated transit improvements.

The Circular includes a new section entitled ''Census Designation of Urbanized Areas'' (UZA). This section describes the designation of UZAs based on the 2010 Census. Beginning in fiscal year (FY) 2013, FTA incorporated the results of the 2010 Census into its formula apportionments. The 2010 Census data shows that the number of UZAs increased from 465 in 2000 to 497 in 2010, and the total population residing in UZAs increased from 195 to 223 million-an increase of approximately 12 percent. As a result, some UZAs have crossed statutorily-mandated population thresholds resulting in changes to the amount of formula funds that those areas can receive, and possibly resulting in changes to eligible uses of those funds.

The section entitled ''FTA's Role in Program Administration'' was revised to clarify that funds are apportioned to States and designated recipients (DR), only: States for small UZAs; and DRs for large UZAs. One commenter suggested that a regional body be permitted to serve as a designated recipient for small UZAs. Federal law does not allow a regional planning organization to serve as a designated recipient for the purpose of allocating apportioned funds to small UZAs. Only governors have the authority to approve the allocation of funds in small UZAs. Therefore, FTA treats the State as the designated recipient for these areas and expects them to approve the individual allocations for the small UZAs.

A new section was added to this chapter entitled, ''Direct Recipient and Sub-recipient Eligibility.'' This section clarifies the process for selecting and establishing a direct recipient, and clarifies the process for allocating funds to direct recipients and for sub-awarding funds to subrecipients. Direct recipients must be public entities that are legally eligible to apply for FTA

funding. If certain requirements are met, a public agency may apply for some or all of a UZA's apportionment.

One commenter suggested that FTA allow private for-profit transit operators to be eligible subrecipients under the section 5307 Program. In addition, several commenters, particularly those located in newly- classified urbanized areas as a result of the 2010 Census, requested that FTA consider allowing non-profits to be eligible subrecipients under the section 5307 program. Historically, the only eligible subrecipients under this program have been public entities otherwise eligible to be direct recipients. However, FTA proposed and is continuing its position that non-profit agencies be eligible subrecipients for job access and reverse commute projects only. This is described in more detail in Section E of this notice and Chapter IV of the Circular. Outside of this allowance, private for-profit and non-profit operators may receive 5307 funding through a contracted service arrangement with an eligible FTA recipient.

A Section 5307 recipient, whether a designated recipient or direct recipient, may choose to pass its grant funds through to another eligible entity (sub-recipient) to carry out a project eligible under Section 5307. Designated recipients must inform FTA of specific allocations for direct recipients in a ''split letter,'' which establishes the allocation of section 5307 funds in a large UZA. With respect to associated transit improvement projects, one commenter suggested that the split letter include the agencies undertaking associated transit improvements, and not specific projects. The Circular explicitly states that specific projects do not need to be identified. However, FTA made a minor change to the circular language to clarify that a designated recipient's sub-area allocation documentation should identify the use of funds for eligible associated transit improvements and how the requirement will be met.

Added to the final Circular was further clarification of subrecipient arrangements that may arise as a result of revisions to urbanized area boundaries based on the U.S. Census. Designated recipients and direct recipients may enter into a contract for service with private non-profits who once provided public transportation service in a rural area that has been re-designated as an urbanized area. FTA acknowledges that some localities may consider other alternatives, including providing the service directly.

Also included in this Chapter in the section entitled ''Relationship to Other Programs,'' is discussion on the relationship between the section 5307 Program and the Safe, Accountable, Efficient Transportation Equity Act, a Legacy for Users (Pub. L. 109–59, SAFETEA–LU) programs that were repealed by MAP–21, including the following:

- Clean Fuels Grant Program (former section 5308)
- Bus and Bus Facilities Discretionary Program (former section 5309(b)(3)
- Job Access and Reverse Commute Program (former section 5316)
- New Freedom Program (former section 5317)
- Paul S. Sarbanes Transit in the Parks Program (former section 5320)
- Alternatives Analysis Program (former section 5339)

Funds previously authorized for programs that were repealed by MAP–21 may remain available for obligation unless Congress rescinds or redirects them to other programs. Funds made available to carry out the above programs are subject to the program rules and requirements at the time funds were appropriated.

This section also discusses the relations between the section 5307 Program and programs that were either added or amended by MAP 21, including the following:

- Fixed Guideway Capital Investment Program (section 5309, New and Small Starts, and Core Capacity Improvements)
- Public Transportation Emergency Relief Program (section 5324)
- Bus and Bus Facilities Formula Program (section 5339)
- State of Good Repair Formula Program (section 5337)
- Rural Area Formula Program (section 5311)
- Transit Oriented Development Pilot Program (section 20005(b) of MAP–21)
- Transportation Alternatives Program (23 U.S.C. 213(b))
- Federal Lands Access Program (23 U.S.C. 204).

Once commenter requested clarification of the transfer provision described under the discussion of the section 5339 Bus and Bus Facilities Formula Program. Under the section 5339 Bus and Bus Facilities formula program, a portion of the funds are allocated through an initial national distribution to States. The remaining funds are apportioned consistent with the formula under section 5336 (other than subsection (b)) to States and UZAs on the basis of population, vehicle revenue miles and passenger miles. In general, section 5307 Program requirements apply to section 5339 grants. The Governor of a State or the Governor's designee may transfer funds apportioned under the national distribution only to supplement amounts apportioned under the Rural Area (section 5311(c)) or section 5307 Program. The law does not allow section 5339 funds apportioned pursuant to the section 5336 formula to be transferred to the section 5307 or 5311 programs. FTA revised the final Circular to address this comment. Further information on section 5339 will be published in a separate proposed Circular for notice and comment.

*D. Chapter III—General Program Information*

This chapter discusses in more detail the apportionments for the section 5307 Program. It also discusses the Federal share of projects costs, local share, other sources of financing, and the new Passenger Ferry Discretionary Grant Program. Discussion of eligible projects was moved from chapter III in the previous Circular, to chapter IV in the final Circular.

The section entitled ''Apportionment of Program Funds,'' provides the revised apportionment calculations, including the new set-asides and formula calculations established by MAP–21. Section 5336(h) of title 49, U.S.C., now provides that 3.07 percent of section 5307 funds available for apportionment are allocated on the basis of low-income persons residing in UZAs, with 25 percent of these funds allocated to areas below 200,000 in population and the remaining 75 percent allocated to areas 200,000 and over in population. MAP–21 also increased the percentage of funds allocated on the basis of Small Transit Intensive Cities (STIC) factors from 1 to 1.5 percent. Finally, MAP–21 established a new 0.5 percent takedown from the 5307 program for the State Safety Oversight Grant Program and a $30 million takedown for the new Passenger Ferry Discretionary Grant Program.

Generally, MAP–21 extended the number of years that apportioned funds remain available for obligation from 4 to 6 years. As a result, apportioned funds are now available for obligation for a total of 6 years, including the year of apportionment.

One commenter requested clarification on whether the Governor of a State is permitted to redirect funds apportioned to a large UZA within 90 days of lapsing. This is not permitted under MAP–21, nor was it permitted

under SAFETEA–LU. However, to better articulate the transfer provisions found in section 5336(e), FTA has clarified the language in the circular to reflect that a Governor may use any 5307 program funds from the Governor's apportionment that remain available for obligation beginning ninety days before the expiration of their period of availability in any area within the state (including large UZA's) for purposes eligible under the Urbanized Area Formula Program without prior consultation. The Governor may not redirect funds apportioned to a large UZA, unless the funds are transferred to the State by the designated recipient in accordance with the procedures identified in the final Circular.

This chapter also provides a brief introduction of the new Passenger Ferry Grants Discretionary Program. Each fiscal year, a total of $30 million is authorized to be set aside from the 5307 program to support passenger ferry projects that will be selected on a competitive basis. One commenter suggested that consideration be given to making the application process for discretionary ferry grants as streamlined as possible to reduce the administrative burden on transit operators who are preparing proposals. It was also requested that funding be made predictable, to the extent possible. FTA has coordinated extensively with the passenger ferry industry in developing the Passenger Ferry Discretionary Program. By statute, funds are allocated on a competitive basis, and cannot be entirely predictable due to the differences in the applications submitted from year to year.

Generally, and consistent with MAP–21, the final Circular does not change the local match requirements—there is a 20 percent local match requirement for capital assistance and a 50 percent requirement for operating assistance. However, MAP–21 expanded the category of funds that can be used as local match. In addition to those sources of local match previously authorized under SAFETEA–LU, local match may also be derived from the following newly authorized sources:

- Amounts appropriated or otherwise made available to a department of or agency of the Government (other than DOT), such as Community Development Block Grant Funds administered by the Department of Housing and Urban Development.
- Any amount expended by providers of public transportation by vanpool for the acquisition of rolling stock to be used in the recipient's service area, excluding any amounts the provider may have received in Federal, State or local government assistance for such acquisition. The provider is required to have a binding agreement with the public transportation agency to provide service in the relevant UZA.

The final Circular has been revised to clarify that the Federal share of vehicle acquisition for purposes of complying with the Clean Air Act or the Americans with Disabilities Act, is 85 percent. The Federal share is 90 percent for vehicle related equipment and facilities. One commenter identified a discrepancy in the **Federal Register** notice accompanying the proposed circular regarding the eligibility of clean fuel buses as clean air act projects. The statement in the **Federal Register** notice was incorrect. Clean fuel buses remain eligible Clean Air Act projects and are eligible for an increased Federal share. However, biodiesel is no longer considered a clean fuel.

Lastly, the section entitled ''Alternative Financing'' includes discussion of updated eligibility criteria for capital projects seeking Transportation Infrastructure Finance and Innovation Act (TIFIA) financing, pursuant to section 2002 of MAP–21 (23 U.S.C. 601 et seq). Eligible projects include any transit capital project which is anticipated to meet the minimum statutory monetary threshold size for TIFIA financing.

*E. Chapter IV—Eligible Projects and Requirements*

In the final Circular, project eligibility and requirements was moved from chapter III into a new chapter IV. This chapter discusses the types of projects and activities that may be funded under the 5307 program. One commenter suggested that FTA clarify whether the list of eligible projects provided in the proposed Circular was exhaustive, and to include reference to bus rapid transit projects in this list. FTA accepts this suggestion and has revised the final Circular accordingly. In response to other comments received, FTA also made a number of clarifying edits which are reflected in the final Circular.

Most of the comments received on the proposed Circular pertained to the section entitled ''Job Access and Reverse Commute Projects.'' MAP–21 repealed the Job Access and Reverse Commute (JARC) Program, (former section 5316); however, job access and reverse commute projects are now eligible under the section 5307 Program. Job access and reverse commute projects are transportation projects ''to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.'' 49 U.S.C. 5302(9).

Under the former section 5316 JARC Program, funds were apportioned to States and designated recipients which were then required to expend those funds on eligible JARC projects. Under the section 5307 Program, designated recipients are not required to expend funds on job access and reverse commute projects. Job access reverse commute projects are now similar to other types of projects that are eligible under the section 5307 Program. Several commenters requested that FTA require designated recipients to continue to fund existing JARC projects, or that they conduct an analysis or otherwise demonstrate that the needs of the target population are being met without funding for such services. The law does not authorize FTA to require recipients to spend funds on JARC projects, nor does FTA have the statutory authority to require that an analysis be completed prior to allocating funds. Designated recipients have the authority to determine how program funds are allocated in their urbanized area. The metropolitan planning process and the statutory requirement for a program of projects (POP) provide opportunities for public review and comment on which projects are selected for funding. As stated in the final Circular, FTA strongly encourages recipients to conduct proactive outreach to representatives of human services transportation providers, representatives of low-income populations, and welfare recipients in developing the program of projects.

In the proposed Circular, FTA proposed that the car loan program and the voucher program, which were previously eligible under the section 5316 JARC Program, no longer be eligible JARC projects under the section 5307 Program. Numerous commenters requested that JARC activities eligible under the former section 5316 JARC Program also be eligible under the section 5307 Program, including car loan and voucher programs that would not otherwise be consistent with the definition of public transportation. FTA concurs that all categories of projects that were previously eligible under the former section 5316 JARC Program remain eligible for funding under the section 5307 Program. All other section 5307 Program requirements would apply to such projects as well.

Each potential project must be for the ''development'' or ''maintenance'' of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities and also must be otherwise eligible under the 5307 Program. FTA defines ''development of transportation services'' to mean new projects that were not in service on October 1, 2012. New JARC projects may include the expansion or extension of an existing service, so long as the new service was designed to support the target populations; however, such projects are not required to be designed for the sole use of the target populations.

One commenter requested clarification on whether JARC projects in large UZAs were eligible for operating assistance, where operating assistance may otherwise be restricted or prohibited. Consistent with the definition of ''job access reverse commute project,'' provided in the final Circular, such projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible job access and reverse commute projects are not limited by the ''100-bus'' special rule for operating assistance pursuant to 49 U.S.C. 5307(a)(2).

One commenter requested that FTA clarify the planning requirements for JARC projects. Previously, under the section 5316 JARC Program, recipients were required to engage in a coordinated planning process. There is no longer a statutory requirement that recipients engage in a coordinated planning process for JARC projects that are eligible under the section 5307 Program and funded with FY 2013 funds and beyond. However, the coordinated planning process is still required for projects that are funded with section 5316 funds appropriated prior to FY 2013. Unobligated FY 2012 and prior JARC program funds remain available to FTA for obligation until Congress rescinds or redirects the funds to other programs. Recipients must obligate apportioned FY 2012 and prior JARC program funds through the period of availability and must follow the SAFETEA–LU requirements. For example, section 5316 JARC projects must still be derived from a human service public transportation coordinated plan and must also be selected by the designated recipient through an area-wide or statewide competitive selection process.

Although current law does not require JARC projects to be developed through a coordinated planning process, the project must be identified by the MPO and designated recipient as a JARC project in the designated recipient's annual Program of Projects, which must be developed in consultation with interested parties, published with the opportunity for comments, and subject to a public hearing.

Consistent with their prior eligibility under the section 5316 JARC Program, the final Circular reflects FTA's policy to include private non-profits as eligible sub-recipients for JARC projects. Several commenters commended FTA for allowing private non-profits as sub-recipients for JARC projects. Subrecipients will still be required to comply with the section 5307 and other Federal grant requirements for such projects. Relatedly, one commenter suggested that FTA clarify whether recipients may contract for service for JARC projects. Consistent with other types of projects eligible under this program, recipients have the option of contracting for service with private operators. Information on contracting for service is provided in detail elsewhere in the circular.

One commenter noted that under SAFETEA–LU, National Transit Database (NTD) reporting was not required of JARC subrecipients, and requested that FTA make subrecipients exempt from this requirement if they are receiving section 5307 Program funds for JARC projects. While FTA appreciates the comment and the potential burden that this requirement may pose on recipients of funding for JARC projects, by statute all 5307 recipients and subrecipients must report to the NTD. (49 U.S.C. 5335(b)) Operators of services with fewer than 30 vehicles may submit a streamlined report. Recipients that do not operate public transportation may submit a pro-forma NTD report, such as those submitted by State DOTs that use 5307 funds only for planning.

One commenter proposed also that subrecipients not be required to provide non-peak discounts, noting that under SAFETEA–LU, non-peak discounts were not required of JARC subrecipients. The commenter proposed that in order to be consistent with the previous JARC guidance and to reduce the administrative burden on non-profits who do not provide traditional transit services, FTA make subrecipients exempt from this requirement if they are receiving section 5307 Program funds for JARC project purposes only. While FTA appreciates the comment and the potential burden that this requirement may pose on recipients of funding for JARC projects, FTA cannot waive the half fare requirement as it is established by statute. (49 U.S.C. 5307(c)(1)(D))

Associated transit improvements are also eligible under the section 5307 Program. However, under MAP–21, ''public art'' is no longer an eligible associated transit improvement (formerly ''transit enhancement''). Incorporation of design and artistic considerations into public transportation projects may still be an allowable cost, so long as it is an integral part of the project. For example, an artist may be employed as part of the construction design team, or art can be incorporated into functional elements such as walls, seating, lighting, or railings.

One commenter requested that ''transit-oriented carsharing'' should be an eligible expense under the associated transit improvements category and others. Some expenses associated with car sharing may be eligible projects under the JARC program. Eligible uses of funds for associated transit improvements are enumerated in law and addressed in the final Circular.

This chapter also includes a section entitled ''Operating Assistance.'' Recipients in UZAs under 200,000 in population may use 5307 program funds for operating assistance at a 50 percent Federal share. There is no cap on the amount that can be used in these areas for operating assistance. Unless specifically authorized, recipients in UZAs of 200,000 or more in population are not permitted to use program funds for operating assistance.

Under MAP–21, a special rule (49 U.S.C. 5307(a)(2)) hal allows recipients in UZAs with populations of 200,000 or above and that operate 100 or fewer buses in fixed route service during peak hours, to receive a grant for operating assistance subject to the following criteria:

- Public transportation systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 50 percent of the share of the apportionment that is attributable to such systems within the UZA, as measured by vehicle revenue hours.
- Public transportation systems that operate 75 or fewer buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 75 percent of the share of the apportionment that is attributable to such systems within the UZA, as measured by vehicle revenue hours.

One commenter suggested that operators that only provide demand-

response service should also be eligible for operating assistance under this new provision. By law, this provision is only applicable to providers of fixed route service. FTA does not have the legal authority to extend applicability to providers that only provide demand response service. One commenter requested that small transit operators be permitted to receive operating assistance without the proposed operating cap if their services are in portions of large UZAs that are outside of the service area boundaries of the local metropolitan transit authority. The eligibility for operating assistance in a large UZA is defined in statute and includes only the new 100-bus provision and eligible JARC projects, subject to the eligibility requirements described in the circular. FTA does not have the authority to permit further exceptions to these requirements.

The final Circular also clarifies that ''revenues'', as used to determine eligible operating costs, are farebox revenues. FTA has made this definition consistent throughout the circular, including deleting park and ride lot revenues from the sample operating expense worksheet.

Not included in the final Circular is the section on Debt Service Reserve because MAP–21 repealed the 5307 debt service reserve pilot program at 49 U.S.C. 5323(e)(4)(A), as amended by SAFETEA–LU.

*F. Chapter V—Planning and Program Development*

This new chapter replaces the chapter in the previous Circular entitled ''Coordinated Planning.'' Under SAFETEA–LU, certain eligible projects were required to be developed under a locally developed, coordinated planning process. Under MAP–21, coordinated planning is only a requirement of eligibility under the section 5310 program. However, 5307 recipients who apply for section 5310 funds are still required to participate in the local planning process for coordinated public transit-human services. Moreover, FTA strongly encourages 5307 recipients to engage in a coordinated planning process.

One commenter stated that FTA appeared to establish a new certification requirement in the section of the Circular that discusses the coordinated planning process, and requested clarification as to which entity is responsible for this certification. FTA removed the language, which was intended to refer to existing certification requirements that are discussed elsewhere in FTA guidance and is not the subject of this Circular.

This chapter includes a revised discussion of Transportation Management Areas (TMAs) for planning purposes. The statutory definition of a TMA is a UZA with a population of over 200,000 individuals. There is also reference to the joint FTA/FHWA transportation planning regulations at 23 CFR part 40, which include guidelines on determining the boundaries of a Metropolitan Planning Area (MPA).

The Performance Based Planning Section in this chapter is a new addition to the Circular and discusses the requirements of MAP–21's new broad performance management program which supports the seven national performance goals. The performance management framework attempts to improve project decision-making through performance-based planning and programming and through fostering a transparent and accountable decision-making process for MPOs, States, and providers of public transportation.

The section entitled ''Availability of FHWA Flexible Funds for Transit Projects'' clarifies the availability of FHWA funds for eligible transit projects. FHWA flexible funds may be available to FTA recipients for planning and capital projects, and operating expenses. This section also clarifies the requirements for transfer of Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds for transit purposes.

This chapter also includes a section entitled ''Associated Transit Improvements.'' MAP–21 changed the term ''transit enhancements'' to ''associated transit improvements.'' An associated transit improvement is a project ''designed to enhance public transportation service or use and that [is] physically or functionally related to transit facilities.'' This section of the proposed circular discusses the requirements to expend a percentage of a UZA's 5307 program funds on associated transit improvements and also discusses eligible projects.

At least one percent of large UZA's apportionment must be expended on associated transit improvements. One commenter noted that this requirement is too burdensome for small transit agencies. This is a statutory requirement and cannot be waived by FTA (49 U.S.C. 5307 (c)(1)(K). Recipients may expend funds for associated transit improvements on a wide variety of project types, including landscaping and streetscaping, to improve the public environment in which transit operates. This requirement can be met at the UZA level if other providers have eligible projects and does not apply in UZAs with populations of under 200,000.

Also, at least one percent of a UZA's apportioned funds must be expended on transportation security projects unless it is decided that the expenditure is not necessary. Eligible projects are limited to those explicitly stated in statute.

Previously, FTA applied the one percent requirement for transportation security projects at the recipient level. One commenter supported the proposed change to the calculation of the one percent expenditure requirement for public transportation security projects allowing this requirement to be applied at the urbanized area level, rather than at the grant level. This commenter requested that this change apply first in the fiscal year after the final Circular is adopted. In general, policy changes reflected in the final Circular will take effect immediately upon publication. Changes that affect procedures or steps required for allocating funds or receiving a grant will take effect at the next time that such procedures are initiated, whether that occurs in the current fiscal year or the next. For example, if a recipient has initiated the TIP or POP approval process under the prior requirements, the new requirements will apply in the next fiscal year.

This chapter also includes a section on ''Undertaking Projects in Advance.'' The final Circular revises this section to explain the different authorities that allow a recipient to incur costs on a project before grant approval, while still retaining their eligibility for reimbursement after grant approval. The three types of authorities are pre-award authority, letters of no prejudice (LONP), and advanced construction authority (ACA). This section discusses the distinction among these three authorities and the terms and conditions that apply equally to all three.

A few commenters su ggested that the POP only be required to contain information relating to the designated recipient and that information required by the Circular may not be available. Several commenters noted that the roles of the MPO and designated recipient may differ among UZAs, and suggested that FTA provide flexibility by allowing an MPO to communicate suballocations to FTA rather than the designated recipients. FTA allows for flexibility by allowing multiple designated recipients to submit their POPs to FTA in multiple parts. If an MPO is responsible for determining the suballocation, the MPO may be assigned as the designated recipient and given the formal role of determining suballocations.

Another commenter requested that FTA retain flexibility in allowing fixed allocation percentages for sub-area allocations when they have been determined to be the most appropriate method by the MPO members. FTA has made a minor change to the Circular language to indicate that the use of a fixed percentage may not be appropriate, rather than ''is not considered satisfactory.''

This chapter has also been revised to clarify that recipients should consult with FTA regarding the proper level of environmental review prior to expending funds for a project.

Lastly, two commenters suggested that, in cases of loss through a natural disaster, the Circular state that FTA's requirement for early disposition reimbursement may be waived. While FTA has the authority to grant such a waiver, it has not determined that such a waiver will be granted in the future, and does not want to create an expectation that such a waiver will be granted.

*G. Chapter VI—Program Management and Administrative Requirements*

The proposed circular updates this section to add the requirement that recipients certify compliance with 49 U.S.C. 5329(d), which requires recipients and States to develop and implement a Public Transportation Agency Safety Plan.

The final Circular reflects three major changes to this Chapter. First, all references to FTA's current Electronic Grants Management System (commonly known as ''TEAM'') have been removed in consideration of a new system, currently under development. That system is now generically identified as the Electronic Award Management System in this circular. Second, a new section was added to discuss the Federal Funding Accountability and Transparency Act (FFATA) Requirement which requires recipients report information about each first tier sub-award over $25,000 by the end of the month following the month the direct recipient makes any sub-award or obligation.

Lastly, the final Circular clarifies the discussion in the proposed circular on NTD Reporting regarding waivers. The proposed circular stated that FTA would no longer issue any NTD waivers. However, FTA has implemented a reduced reporting requirement for small systems. Where, under certain circumstances described in NTD Reporting Manuals, grant recipients may apply for reduced NTD reporting requirements. For instance, under the Small Systems Waiver, grantees with fewer than 30 vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.

*H. Chapter VII—Other Provisions*

This section of the Circular was revised pursuant to the changes to the State Safety Oversight (SSO) Program and the requirements of 49 CFR part 659 made by MAP–21. Section 5330, which authorizes the SSO Program, will be repealed three years from the effective date of the new regulations implementing the new section 5329 safety requirements. Until then, the current requirements of 49 CFR part 659 will continue to apply.

*I. Tables, Graphs, and Illustrations*

There were no changes made to this section of the Circular.

*J. Appendices*

There were no substantive changes made to this section of the Circular.

**Peter Rogoff,**

*Administrator.*

[FR Doc. 2014–00666 Filed 1–15–14; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2014–0002]**

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

**ACTION:** Request for public comment on renewal of existing information collections.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a renewal of existing information collections for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received by March 17, 2014.

**ADDRESSES:** You may submit comments, identified by one or both of the docket numbers in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** Andréa A. Noel, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE., West Building, NVS–210, Washington, DC 20590. Telephone: (202) 493–0210. For access to background documents, please contact Ms. Noel.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning the proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public

comments on the renewal of the following described collections of information:

*Title:* Record Retention.

*Type of Request:* Renewal of a currently approved information collection.

*OMB Control Number:* 2127–0042.

*Affected Public:* Vehicle manufacturers and vehicle equipment manufacturers (including tire and child restraint system manufacturers).

*Abstract:* Under 49 U.S.C. 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable [NHTSA] to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter.''

To ensure that NHTSA will have access to this type of information, the agency exercised the authority granted in 49 U.S.C. 30166(e) and promulgated 49 CFR Part 576, Record Retention, initially published on August 20, 1974 (39 FR 30045) and most recently amended on July 10, 2002 (67 FR 45873), requiring manufacturers to retain one copy of all records that contain information concerning malfunctions that may be related to motor vehicle safety for a period of five calendar years after the record is generated or acquired by the manufacturer. Part 576 also requires manufacturers to retain for five years the underlying records related to early warning reporting (EWR) information submitted under 49 CFR part 579.

*Estimated annual burden:* Approximately one thousand manufacturers of vehicles and equipment (including tires and child restraint systems) are required to maintain records. We estimate their burden at 40 hours each for a subtotal of 40,000 hours (1,000 respondents × 40 hours). In addition, there are approximately 23,600 equipment manufacturers (excluding child seat and tire manufacturers) whose record retention requirements under part 576 are limited to the documents underlying their part 579 reporting requirements. Their part 579 requirements include only the reporting of incidents involving deaths. Therefore, based on the number of death reports submitted to date by these equipment manufacturers, we estimate that an additional 20 equipment manufacturers have record retention requirements imposed by part 576. We estimate that it will take one hour each to maintain the necessary records for a subtotal burden of 20 hours (20 respondents × one hour). Accordingly, the estimate of total annual burden hours is 40,020 hours (1,000 respondents × 40 hours plus 20 respondents × 1 hour).

*Number of respondents:* 1,020.

Below are detailed instructions for submitting comments on this collection and additional information on the commenting process.

**How do I prepare and submit comments?**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html*. DOT's guidelines may be accessed at *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_quality_guidelines/html/guidelines.html*.

**How can I be sure that my comments were received?**

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

**How do I submit confidential business information?**

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512)

**Will the agency consider late comments?**

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

**How can I read the comments submitted by other people?**

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html*.

Issued on: January 9, 2014 in Washington, DC, under authority delegated in 49 CFR 1.95.

**Frank Borris,**

*Director, Office of Defects Investigation, Office of Enforcement.*

[FR Doc. 2014–00640 Filed 1–15–14; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35751]**

### Iowa Interstate Railroad, Ltd.—Acquisition Exemption—Line of BNSF Railway Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for Iowa Interstate Railroad, Ltd. (IAIS), a Class II rail carrier, to acquire approximately 0.75-miles of rail line in Council Bluffs, Iowa, from BNSF Railway Company (BNSF), subject to employee protective conditions.

**DATES:** The exemption will be effective on February 5, 2014. Petitions to stay must be filed by January 27, 2014. Petitions for reconsideration must be filed by January 31, 2014.

**ADDRESSES:** An original and 10 copies of all pleadings, referring to Docket No. FD 35751, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on IAIS's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

**FOR FURTHER INFORMATION CONTACT:** Jonathon Binet, (202) 245–0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 13, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2014–00741 Filed 1–15–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Notice and Request for Comments

**AGENCY:** Surface Transportation Board, Department of Transportation (DOT).

**ACTION:** 60-day notice of request for approval: Waybill Sample.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of approval for the collection of the Waybill Sample.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

**Description of Collection**

*Title:* Waybill Sample.

*OMB Control Number:* 2140–0015.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Any railroad that is subject to the Interstate Commerce Act and that terminates at least 4,500 carloads on its line in any of the three preceding years or that terminates at least 5% of the revenue carloads terminating in any state in any of the three preceding years.

*Number of Respondents:* 51.

*Estimated Time Per Response:* 75 minutes.

*Frequency:* Six respondents report monthly; 45 report quarterly.

*Total Burden Hours* (annually including all respondents): 315 hours.

*Total ''Non-hour Burden'' Cost:* No ''non-hour cost'' burdens associated with this collection have been identified.

*Needs and Uses:* The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States. Under 49 CFR part 1244, a railroad is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, it either (1) terminates 4500 or more carloads, or (2) terminates at least 5% of the total revenue carloads that terminate in a particular state. The information in the Waybill Sample is used by the Board, other Federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop testimony in Board proceedings. The Board has authority to collect this information under 49 U.S.C. 11144 and 11145.

**DATES:** Comments on this information collection should be submitted by March 17, 2014.

**ADDRESSES:** Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Waybill Sample collection.''

**FOR FURTHER INFORMATION CONTACT:** Marilyn Levitt at (202) 245–0269 or at *levittm@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

*For Further Information or to Obtain a Copy of the STB Form, Contact:* For further information regarding the Waybill Sample collection, contact Paul Aguiar at (202) 245–0323 or *economic.data@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements or requests that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: January 10, 2014.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2014–00697 Filed 1–15–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0666]**

### Proposed Information Collection (Information Regarding Apportionment of Beneficiary's Award); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a spouse and children entitlement to a portion of a veteran or beneficiary's compensation and pension benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Information Regarding Apportionment of Beneficiary's Award, VA Form 21–0788.

*OMB Control Number:* 2900–0666.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Veterans and claimants complete VA Form 21–0788 to report their income information that is necessary for VA to determine whether their compensation and pension benefits can be apportion to his or her dependents.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 12,500 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 25,000.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00663 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0601]**

### Proposed Information Collection (Requirements for Interest Rate Reduction Refinancing Loans); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to refinance a delinquent VA-guaranteed loan with a lower interest rate.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0601'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Requirements for Interest Rate Reduction Refinancing Loans.

*OMB Control Number:* 2900–0601.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Veterans may refinance an outstanding VA guaranteed, insured, or direct loan with a new loan at a lower interest rate provided the veteran still owns the property used as security for the loan. The new loan will be guaranteed only if VA approves it in advance after determining that the

borrower, through the lender, has provided reasons for the loan deficiency, and has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standard provisions.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 25 hours.

*Estimated Annual Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 50.

Dated: January 13, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00718 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0086]**

### Proposed Information Collection (Request for Certificate of Eligibility) Activity; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for loan guaranty benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0086'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Certificate of Eligibility, VA Form 26–1880.

*OMB Control Number:* 2900–0086.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The data collected on VA Form 26–1880 is used to determine a claimant's eligibility for home loan guaranty benefits. Claimants also use VA Form 26–1880 to request restoration of entitlement previously used, or a duplicate Certificate of Eligibility due to the original being lost or stolen.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 80,250 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 321,000.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00662 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0668]**

### Proposed Information Collection (Supplemental Income Questionnaire (for Philippine Claims Only)); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine Philippine claimants' eligibility for pension benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0668'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Supplemental Income Questionnaire (for Philippine Claims Only), VA Form 210784.

*OMB Control Number:* 2900–0668.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Claimants residing in the Philippine complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 30 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 120.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00660 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0458]**

### Proposed Information Collection (Certification of School Attendance or Termination) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify whether a veteran's child between the ages of 18 and 23 years old is attending school.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0458'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Certification of School Attendance or Termination, VA Forms 21–8960 and 21–8960–1.

*OMB Control Number:* 2900–0458.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Claimants complete VA Form 218960 and VA Form 2189601 to certify that a child between the ages of 18 and 23 years old is attending school. VA uses the information collected to determine the child's continued entitlement to benefits. Benefits are discontinued if the child marries, or no longer attending school.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 11,667 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 70,000.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00659 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0659]**

### Proposed Information Collection (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) and Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain evidence to substantiate claims for service connection post-traumatic stress disorder (PTSD).

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to

*nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0659'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a.

*OMB Control Number:* 2900–0659.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* Veterans seeking compensation for post-traumatic stress disorder and need VA's assistance in obtaining evidence from military records and other sources to substantiate their claims of in-service stressors must complete VA Forms 21–0781 and 21–0791a. Veterans who did not serve in combat or were not a prisoner of war and are claiming compensation for post-traumatic stress disorder due to in-service stressors, he or she must provide credible supporting evidence that the claimed in-service stressor occurred.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—16,800 hours.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—980 hours.

*Estimated Average Burden Per Respondent:*

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—70 minutes.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—70 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—14,400.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—840.

Dated: January 13, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00720 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0715]**

## Proposed Information Collection (Servicer's Staff Appraisal Reviewer (SAR) Application) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to nominate servicer appraisal employee as a staff appraisal reviewer.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0715)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Servicer's Staff Appraisal Reviewer (SAR) Application, VA Form 26–0829.

*OMB Control Number:* 2900–0715.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* VA Form 26–0829 is completed by servicers to nominate employees for approval as Staff Appraisal Reviewer (SAR). Servicers SAR's will have the authority to review real estate appraisals and to issue liquidation notices of value on behalf of VA. VA will also use the data collected to track the location of SARs when there a change in employment.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 2 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 20.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00661 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0658]**

### Proposed Information Collection (Lenders Staff Appraisal Reviewer (SAR) Application) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments information needed to certify a lender's nominee as a VA Staff Appraisal Reviewer.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0658'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Lenders Staff Appraisal Reviewer (SAR) Application, VA Form 26–0785.

*OMB Control Number:* 2900–0658.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 26–0785 is completed by lenders to nominate employees for approval as approved Staff Appraisal Reviewer (SAR). Once approved, SAR's will have the authority to review real estate appraisals and to issue notices of values on behalf of VA. VA uses the information colleted to perform oversight of work delegated to lenders responsible for making guaranteed VA backed loans.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 200 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,400.

Dated: January 13, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00719 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0154]**

### Proposed Information Collection (Application for VA Education Benefits) Activity; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision without change of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility for educational benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0154'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Application for VA Education Benefits, VA Form 22–1990.

b. Application for Family Member to Use Transferred Benefits, VA Form 22–1990E.

c. Application for VA Education Benefits Under the National Call to Service (NCS) Program, VA Form 22–1990N.

*OMB Control Number:* 2900–0154.

*Type of Review:* Revision without change of a currently approved collection.

*Abstract:*

a. Claimants complete VA Form 22–1990 to apply for education assistance allowance.

b. Claimants who signed an enlistment contract with the Department of Defense for the National Call to Service program and elected one of the two education incentives complete VA Form 22–1990E.

c. VA Form 22–1990N is completed by claimants who wish to transfer his or her Montgomery GI Bill entitlement their dependents.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 263,827 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 855,652.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00658 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0469]**

### Proposed Information Collection (Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish entitlement to Government Life insurance proceeds.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0469'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary, VA Form 29–541.

*OMB Control Number:* 2900–0469.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* VA uses the information collected on VA Form 29–541 to establish a claimant's entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,039 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,078.

Dated: January 13, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00716 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0009]**

### Proposed Information Collection (Disabled Veterans Application for Vocational Rehabilitation) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for vocational rehabilitation benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0009'' in any correspondence. During the comment

period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Disabled Veterans Application for Vocational Rehabilitation (Chapter 31, Title 38 U.S.C.), VA Form 28–1900.

*OMB Control Number:* 2900–0009.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* VA Form 28–1900 is completed by Veterans with a combined service-connected disability rating of ten percent or more and awaiting discharge for such disability to apply for vocational rehabilitation benefits. VA provides service and assistance to veterans with disabilities, who have an entitlement determination, to gain and keep suitable employment. Vocational rehabilitation also provides service to support veterans with disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 16,961 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 67,844.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00657 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0660]**

### Proposed Information Collection (Request for Contact Information); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain contact information on individuals residing in a remote location.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 17, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0660'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Contact Information, VA Form 21–30.

*OMB Control Number:* 2900–0660.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 21–30 is used to locate individuals when contact information cannot be obtained by other means or when travel funds may be significantly impacted in cases where an individual resides in a remote location and is not home during the day or when visited. VA uses the data collected determine whether a fiduciary of a beneficiary is properly executing his or her duties.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,250 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 5,000.

Dated: January 10, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–00664 Filed 1–15–14; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

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Part II

## Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 430, 431 et al.

Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 430, 431, 435, 436, 440, 441 and 447**

**[CMS–2249–F; CMS–2296–F]**

**RIN 0938–AO53; 0938–AP61**

# Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Medicaid regulations to define and describe state plan section 1915(i) home and community-based services (HCBS) under the Social Security Act (the Act) amended by the Affordable Care Act. This rule offers states new flexibilities in providing necessary and appropriate services to elderly and disabled populations. This rule describes Medicaid coverage of the optional state plan benefit to furnish home and community based-services and draw federal matching funds.

This rule also provides for a 5-year duration for certain demonstration projects or waivers at the discretion of the Secretary, when they provide medical assistance for individuals dually eligible for Medicaid and Medicare benefits, includes payment reassignment provisions because state Medicaid programs often operate as the primary or only payer for the class of practitioners that includes HCBS providers, and amends Medicaid regulations to provide home and community-based setting requirements related to the Affordable Care Act for Community First Choice State plan option. This final rule also makes several important changes to the regulations implementing Medicaid 1915(c) HCBS waivers.

**DATES:** *Effective Date:* These regulations are effective on March 17, 2014.

**FOR FURTHER INFORMATION CONTACT:** Kathy Poisal, (410)786–5940.

**SUPPLEMENTARY INFORMATION:**

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## Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ADA Americans with Disabilities Act of 1990 (Pub. L. 110–325)
ADLs Activities of daily living
AHRQ Agency for Healthcare Research and Quality
ANPRM Advance Notice of Proposed Rulemaking
CFC Community First Choice (1915(k) State plan Option)
CHIPRA Children's Health Insurance Program Reauthorization of 2009 (Pub. L. 111–3)
CMS Centers for Medicare & Medicaid Services
DRA Deficit Reduction Act of 2005 (Pub. L. 109–171)
EPSDT Early and Periodic Screening, Diagnosis and Treatment
FBR Federal benefit rate
FFP Federal financial participation
FPL Federal poverty line
FY Federal fiscal year
HCB Home and community based
HCBS Home and Community-Based Services
HHS Department of Health and Human Services
IADLs Instrumental activities of daily living
ICF/IID Intermediate care facility for individuals with intellectual disabilities
LOC Level of care
NF Nursing facility
OBRA'81 Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35)
OT Occupational therapy
PT Physical therapy
RFA Regulatory Flexibility Act
SPA State Plan Amendments
SSI Supplemental Security Income
SSI/FBR Supplemental Security Income Federal Benefit Rate
UPL Upper payment limit

## I. Executive Summary

### *A. Purpose*

This final rule amends Medicaid regulations consistent with the requirements of section 2601 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), which added section 1915(h)(2) to the Act to provide authority for a 5-year duration for certain demonstration projects or waivers under sections 1115, 1915(b), (c), or (d) of the Act, at the discretion of the Secretary, when they provide medical assistance to individuals who are dually eligible for both Medicaid and Medicare benefits.

This final rule also provides additional limited exception to the general requirement that payment for services under a state plan must be made directly to the individual practitioner providing a service when the Medicaid program is the primary source of reimbursement for a class of individual practitioners. This exception will allow payments to be made to other parties to benefit the providers by ensuring workforce stability, health and welfare, and trainings, and provide added flexibility to the state. We are including the payment reassignment provision, because states' Medicaid programs often operate as the primary or only payer for the class of practitioners that includes HCBS providers.

In addition, this final rule also amends Medicaid regulations to provide home and community-based setting requirements related to section 2401 of the Affordable Care Act for section

1915(k) of the Act, the Community First Choice State plan option.

This final rule further amends the Medicaid regulations to define and describe state plan home and community-based services (HCBS). This regulation outlines the optional state plan benefit to furnish home and community-based state plan services and draw federal matching funds. As a result, states will be able to design and tailor Medicaid services to better accommodate individual needs. This may result in improved patient outcomes and satisfaction, while enabling states to effectively manage their Medicaid resources.

This final rule also revises the regulations implementing Medicaid home and community-based services (HCBS) waivers under section 1915(c) of the Social Security Act (the Act) by providing states the option to combine the existing three waiver targeting groups identified in § 441.301. In addition, this final rule will include other changes to the HCBS waiver provisions to convey expectations regarding person-centered plans of care, to provide characteristics of settings that are home and community-based as well as settings that may not be home and community-based, to clarify the timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates, and to describe the additional strategies available to CMS to ensure state compliance with the statutory provisions of section 1915(c) of the Act. The final rule also includes requirements for person-centered plans of care that document, among other things, an individual's choice of a HCB setting from among options that meet the individual's needs.

*B. Summary of the Major Provisions*

1. State Plan Home Community-Based Services (Section 1915(i) of the Act)

The Deficit Reduction Act (DRA) added a new provision to the Medicaid statute entitled ''Expanded Access to Home and Community-Based Services for the Elderly and Disabled.'' This provision allows states to provide HCBS (as an optional program) under their state Medicaid plans. This option allows states to receive federal financial participation for services that were previously eligible for federal funds only under waiver or demonstration projects. This provision was further amended by the Affordable Care Act. The statute now provides additional options for states to design and implement HCBS under the Medicaid state plan. In the April 4, 2008, **Federal Register**, (73 FR 18676) we published a proposed rule to amend Medicaid regulations to implement HCBS under the DRA. That proposed rule was not finalized, and with the passage of section 2402 of the Affordable Care Act, some previously proposed regulations would no longer be in compliance with the current law under section 1915(i) of the Act. In addition, several new provisions were added. Specifically, the Affordable Care Act amended the statute by adding a new optional categorical eligibility group for individuals to provide full Medicaid benefits to certain individuals who will be receiving HCBS. It also authorized states to elect not to comply with section 1902(a)(10)(B) of the Act pertaining to comparability of Medicaid services. After closely analyzing the Affordable Care Act provisions, we concluded that a new proposed rule was necessary. This final rule also establishes home and community-based setting requirements. We will allow states a transition/phase-in period for current approved 1915(i) State plan HCBS to demonstrate compliance with these requirements.

2. 5-Year Period for Certain Demonstration Projects and Waivers

This final rule provides for a 5-year approval or renewal period, subject to the discretion of the Secretary, for certain Medicaid waivers. Specifically, this time period applies for demonstration and waiver programs through which a state serves individuals who are dually eligible for both Medicare and Medicaid benefits.

3. Provider Payment Reassignments

Section 1902(a)(32) of the Act provides that state plans can allow payments to be made only to certain individuals or entities. Specifically, payment may only be made to an individual practitioner who provided the service. The statute provides several specific exceptions to the general principle of direct payment to the individual practitioner.

Over the years, some states have requested that we consider adopting additional exceptions to the direct payment principle to permit withholding from the payment due to the individual practitioner for amounts paid by the state directly to third parties for health and welfare benefits, training costs and other benefits customary for employees. These amounts would not be retained by the state, but would be remitted to third parties on behalf of the practitioner for the stated purpose.

While the statute does not expressly provide for additional exceptions to the direct payment principle, we believe the circumstances at issue were not contemplated under the statute. Therefore, we proposed that the direct payment principle should not apply because we think its application would contravene the fundamental purpose of this provision. The apparent purpose of the direct payment principle was to prohibit factoring arrangements, and not to preclude a Medicaid program that is functioning as the practitioner's primary source of revenue from fulfilling the basic responsibilities that are associated with that role. Therefore, we proposed an additional exception to describe payments that we do not see as within the intended scope of the statutory direct payment requirement, that would allow the state to claim as a provider payment amounts that are not directly paid to the provider, but are withheld and remitted to a third party on behalf of the provider for health and welfare benefit contributions, training costs, and other benefits customary for employees.

4. Community First Choice State Plan Option: Home and Community-Based Setting Requirements (Section 1915(k) of the Act)

Section 1915(k)(1)(A)(ii) of the Act provides that home and community-based attendant services and supports must be provided in a home and community-based setting. The statute specifies that home and community-based settings do not include a nursing facility, institution for mental diseases, or an intermediate care facility for individuals with intellectual disabilities. We have adopted this statutory language in our regulations. Additionally, to provide greater clarity, we have established that home and community-based settings must exhibit specific qualities to be eligible sites for delivery of home and community-based services.

After consideration of comments received in response to the Community First Choice (CFC) proposed rule published in the **Federal Register** (76 FR 10736) on February 25, 2011, we decided to revise the setting provision and publish our proposed definition as a new proposed rule to allow for additional public comment before this final rule. The public comment process has been valuable in assisting us to develop the best policy on this issue for Medicaid beneficiaries. We have fully considered all comments received, and have aligned the requirements pertaining to home and community-based settings across CFC, section 1915(i) State plan HCBS, and section 1915(c) of the Act HCBS waivers.

5. Home and Community Based Services Waivers (Section 1915(c) of the Act)

Section 1915(c) of the Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a state may offer Home and Community-Based Services (HCBS) to state-specified group(s) of Medicaid beneficiaries who otherwise would require services at an institutional level of care. This final rule will give states the option to combine the existing three waiver targeting groups as identified in § 441.301. In addition, it will implement requirements regarding person-centered service plans, clarify the timing of amendments when states modify HCBS waiver programs and service rates, and describe the additional strategies available to us to ensure state compliance with the provisions of section 1915(c) of the Act. This final rule also establishes home and community-based setting requirements. We will allow states a transition/phase-in period for current approved 1915(c) HCBS waivers to demonstrate compliance with these requirements.

*C. Summary of Costs, Benefits and Transfers*

| Provision description | Total costs | Total benefits | Total transfers |
|---|---|---|---|
| 1915(i) State Plan Home Community-Based Services. | The estimated total annual collection of information requirements cost to states is $21,805.. | We anticipate that states will make varying use of the state plan HCBS benefit provisions to provide needed long-term care services for Medicaid beneficiaries. These services will be provided in the home or alternative living arrangements in the community, which is of benefit to the beneficiary, and is less costly than institutional care.. | We estimate that, adjusted for a phase-in period during which states gradually elect to offer the state plan HCBS benefit, in FY 2014 the federal cost would be $150 million, and the estimated state cost would be $115million. (Some portion of these impacts would actually be societal costs rather than "transfers", to the extent that new users of the HCBS in this rule are previously not receiving services.) |
| Section 2601 of the Affordable Care Act: 5-Year Period for Demonstration Projects (Waivers). | N/A ..... | As this provision elongates the time period under which states may operate certain waiver programs without renewal, it will help states to minimize administrative and renewal requirements in order to better focus on program implementation and quality oversight.. | No impact on federal or state Medicaid funding. This rule is voluntary on the part of states. |
| Provider Payment Reassignments. | N/A ..... | This rule implements additional operational flexibilities for states to help ensure a strong provider workforce.. | We do not anticipate any impact on federal Medicaid funding. This rule is voluntary on the part of states. |
| Section 2401 of the Affordable Care Act: Community First Choice State Plan Option: Home and Community-Based Setting Requirements. | N/A ..... | This rule provides states with necessary guidance to support compliance with the requirement that CFC services are provided in a home or community based-setting. This rule also provides beneficiary protections to support an individual's choice to receive HCBS in a manner that allows for integration with the greater community.. | We do not anticipate there is an impact on federal or state Medicaid funding, as the purpose of the rule is merely to define home and community-based settings in which CFC services may be provided. |
| 1915(c) Home and Community-Based Services Waivers. | States may incur costs in coming into compliance with this rule. Given the variability in state programs, and the varying extent to which some are already complying, it is difficult to estimate these costs.. | These changes will support beneficiaries by enabling services to be planned and delivered in a manner driven by the beneficiary and will maximize opportunities for beneficiaries to have access to the benefits of community living and receive services in the most integrated setting. These changes will also enable states to realize administrative and program design simplification and improve efficiency of operation.. | We do not anticipate any impact on federal Medicaid funding. |

## II. State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice

*A. Background*

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171) was signed into law. Section 6086 of the DRA is entitled ''Expanded Access to Home and Community-Based Services for the Elderly and Disabled.'' Section 6086(a) of the DRA adds a new section 1915(i) to the Act that allows states, at their option, to provide home and community-based services (HCBS) under their regular state Medicaid plans. This option allows states to receive federal financial participation (FFP) for services that were previously eligible for the funds only under waiver or demonstration projects, including those under sections 1915(c) and 1115 of the Act. Section 1915(i) of the Act was later amended by sections 2402(b) through (g) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted March 23, 2010) (Affordable Care Act) to provide additional options for states to design and implement HCBS under the Medicaid state plan.

In the following discussion of this regulation, we refer to particular home and community-based service(s) offered under section 1915(i) of the Act as ''State plan HCBS'' or simply ''HCBS'' [1]. We refer to the ''State plan HCBS benefit'' when describing the collective requirements of section 1915(i) of the Act that apply to states electing to provide one, or several, of the authorized HCBS. We choose to use the

[1] Note that the abbreviation HCBS does not distinguish between singular and plural. Where this could be confusing, we spell out home and community-based service(s).

term ''benefit'' rather than ''program'' to describe section 1915(i) of the Act to avoid possible confusion with section 1915(c) HCBS waiver programs. The State plan HCBS benefit shares many features with section 1915(c) waiver programs, but it is a state plan benefit, although one with very unique features not common to traditional state plan services.

Under section 1915(i) of the Act, states can provide HCBS to individuals who require less than institutional level of care (LOC) and who would, therefore, not be eligible for HCBS under section 1915(c) waivers, in addition to serving individuals who have needs that would meet entry requirements for an institution. As with other state plan services, the benefits must be provided statewide, and states must not limit the number of eligible people served.

Section 1915(i) of the Act explicitly provides that State plan HCBS may be provided without determining that, but for the provision of these services, individuals would require the LOC provided in a hospital, a nursing facility (NF), or an intermediate care facility for individuals with intellectual disabilities [2] (ICF/IID) as is required in section 1915(c) HCBS waivers. While HCBS provided through section 1915(c) waivers must be ''cost-neutral'', as compared to institutional services, no cost neutrality requirement applies to the section 1915(i) State plan HCBS benefit. States are not required to produce comparative cost estimates of institutional care and the State plan HCBS benefit. This significant distinction allows states to offer HCBS to individuals whose needs are substantial, but not severe enough to qualify them for institutional or waiver services, and to individuals for whom there is not an offset for cost savings in NFs, ICFs/MR, or hospitals.

To be eligible for the State plan HCBS benefit, an individual must be included in an eligibility group that is contained in the state plan, including if the state elects, the new eligibility group defined at section 1902(a)(10)(A)(ii)(XXII) of the Act. Each individual must meet all financial and non-financial criteria set forth in the plan for the applicable eligibility group.

HCBS benefits that are not otherwise available through section 1905(a) of the Act state plan services under the Medicaid Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit may be furnished to Medicaid eligible children who meet the State plan HCBS needs-based eligibility criteria, and who meet the state's medical necessity criteria for the receipt of services. In addition to meeting EPSDT requirements through the provision of 1905(a) services, a state may also meet, in part, a particular child's needs under EPSDT through services that are also available through the 1915(i) benefit. However, all Medicaid-eligible children must have full access to services required under EPSDT, and the provision of 1915(i) State plan HCBS should in no way hinder their access to such services.

Section 1915(i)(1)(H)(i) of the Act requires the state to ensure that the State plan HCBS benefit meets federal and state guidelines for quality assurance, which we interpret as assurances of quality improvement. Consistent with current trends in health care, the language of quality assurance has evolved to mean quality improvement, a systems approach designed to continuously improve services and support and prevent or minimize problems prior to occurrences. Guidelines for quality improvement have been made available through CMS policies governing section 1915(c) HCBS waivers available at *www.hcbswaivers.net* and published manuscripts available at *www.nationalqualityenterprise.com*.

Section 1915(i) provides states the option to provide home and community-based services, but does not define ''home and community-based.'' Along with our overarching goal to improve Medicaid HCBS, we seek to ensure that Medicaid is supporting needed strategies for states in their efforts to meet their obligations under the ADA and the Supreme Court decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). In the *Olmstead* decision, the Court affirmed a state's obligations to provide covered program services to eligible individuals with disabilities in the most integrated setting appropriate to their needs. A state's obligations under the ADA and section 504 of the Rehabilitation Act are not defined by, or limited to, the services provided under the State's Medicaid program. However, the Medicaid program can support compliance with the ADA, section 504 of the Rehabilitation Act, and *Olmstead* through the provision of Medicaid services to Medicaid-eligible individuals in integrated settings.

We noted in the May 3, 2012 proposed rule published in the **Federal Register** (77 FR 26362), that home and community-based settings do not include nursing facilities, institutions for mental diseases, intermediate care facilities for the mentally retarded, hospitals, or any other locations that have the qualities of an institutional setting as determined by the Secretary.

While HCBS are not available while an individual resides in an institution, HCBS may be available to assist individuals to transition from an institution to the community. Recognizing that individuals leaving institutions require assistance to establish themselves in the community, we would allow states to include in a section 1915(i) benefit, as an ''other'' service, certain transition services to be offered to individuals to assist them in their transition to the community. We proposed that community transition services could be commenced prior to discharge and could be used to assist individuals during the period of transition from an institutional residence. Additionally, services could be provided to assist individuals transitioning to independent living in the community, as described in a letter to the State Medicaid Directors on May 9, 2002 (SMDL #02–008). We further recognize that, for short hospital stays, an individual may benefit from ongoing support through the State plan HCBS benefit to meet needs not met through the provision of hospital services that are identified in the individual's person-centered service plan, to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual's functions. Importantly, these services must be exclusively for the benefit of the individual, not the hospital, and must not substitute for services that the hospital is obligated to provide through its conditions of participation or under federal or state laws. However, payments for room and board are expressly prohibited by section 1915(i)(1) of the Act, except for respite care furnished in a setting approved by the state that is not the individual's residence.

Section 2601 of the Affordable Care Act adds a new paragraph to section 1915(h) of the Act to permit the Secretary, at her discretion, to approve a waiver that provides medical assistance for individuals dually eligible for Medicare and Medicaid (''dual eligibles'') for an initial period of up to 5 years and renewed for up to 5 years, at the state's request. The statute defines a dual eligible as: ''an individual who is entitled to, or enrolled for, benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and is eligible for medical assistance

[2] While the Social Security Act still refers to these types of facilities as intermediate care facilities for the mentally retarded (ICFs/MR), the language used in this rule reflects ''intellectual disability'' as the appropriate way to discuss this type of disability, based on Rosa's Law and we now refer to this types of facility as an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

under the state plan under this title or under a waiver of such plan.'' This new authority enhances existing tools available to improve and coordinate care and services for this particularly vulnerable group of beneficiaries. This change provides an important tool for states to design programs to better coordinate services for dual eligible individuals.

Section 1902(a)(32) of the Act generally states that ''no payment under the plan for care and services provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise.'' However, section 1902(a)(32) of the Act contains several specific exceptions to the general principle of direct payment to individual practitioners. There are exceptions for payments for practitioner services where payment is made to the employer of the practitioner, and the practitioner is required as a condition of employment to turn over fees to the employer; payments for practitioner services furnished in a facility when there is a contractual arrangement under which the facility bills on behalf of the practitioner; reassignments to a governmental agency, through a court order, or to a billing agent; payments to a practitioner whose patients were temporarily served by another identified practitioner; or payments for a childhood vaccine administered before October 1, 1994.

Section 1915(k)(1)(A)(ii) of the Act provides that home and community-based attendant services and supports must be provided in a home and community-based setting. The statute specifies that home and community-based settings do not include a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded.[3] We are aware of settings other than those specified in section 1915(k)(1)(A)(ii) of the Act that may exhibit qualities of an institutional setting, such as public hospitals. Over the past several years, we have sought input on how to define the characteristics of what makes a setting ''home and community-based'' (HCB). To provide greater clarity, we are establishing with this final rule that home and community-based settings must exhibit specific qualities to be eligible sites for delivery of HCBS under Medicaid. Any modifications to these qualities must be justified in an individual's person-centered plan, and we believe this gives states the flexibility to address specific needs of beneficiaries. We have included these provisions to move toward a stronger articulation of the qualities that make a setting a home and truly integrated in the broader community. These are the qualities most often articulated by persons with disabilities as key determinants of independence and community integration. We believe that these qualities of home and community-based settings will support the use of the Medicaid program to maximize the opportunities for individuals to access the benefits of home and community living. We expect states electing to provide benefits under section 1915(k), 1915(i), and/or 1915(c) to include a definition of home and community-based setting that incorporates these qualities and will review all SPAs and 1915(c) waivers to determine whether they propose settings that are home or community-based. We will permit states with approved section 1915(k) SPAs, 1915(i) SPAs, and 1915(c) waivers a reasonable transition period to come into compliance with the HCB setting requirements as promulgated in our final rule.

For a detailed description of the background of this rule, please refer to ''State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Setting Requirements for Community First Choice'' proposed rule published in the May 3, 2012 **Federal Register** (77 FR 26362).

*B. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments*

On May 3, 2012, we published a proposed rule (77 FR 26362) in the **Federal Register** entitled ''Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Setting Requirements for Community First Choice,'' (hereinafter referred to as ''HCBS proposed rule'') that proposed to amend the Medicaid regulations to define and describe state plan home and community-based services (HCBS) under the Affordable Care Act. This rule offers states new flexibilities in providing necessary and appropriate services to elderly and disabled populations. The rule also proposed to amend Medicaid regulations consistent with the requirements of section 2601 of the Affordable Care Act, which added section 1915(h)(2) to the Act to provide authority for a 5-year duration for certain demonstration projects or waivers under sections 1115, 1915(b), (c), or (d) of the Act. In addition, the proposed rule includes payment reassignment provisions because states' Medicaid programs often operate as the primary or only payer for the class of practitioners that includes HCBS providers. Finally, the rule proposed Medicaid regulations to provide home and community-based setting requirements related to section 2401 of the Affordable Care Act for the section 1915(k) Community First Choice State plan option.

We received a total of 401 timely comments from state agencies, advocacy groups, health care providers, employers, health insurers, health care associations, and the general public. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding the proposed changes. We note that many expressed overall satisfaction with the benefit as a whole, in that it offers another opportunity for individuals served through the Medicaid program to return or remain in the community with family and friends. A couple stated that this opportunity offers additional flexibility and will not only provide people the opportunity to live and thrive where they choose, but also has the potential to save states' dollars.

After consideration of comments received in response to the Community First Choice (CFC) proposed rule published in the **Federal Register** on February 25, 2011, we revised the setting provision and published our proposed definition as a new proposed rule to allow for additional public comment before this final rule. Since CFC and section 1915(i) both pertain to home and community-based services, we have aligned this CFC proposed language with the section 1915(i) proposed home and community-based setting requirements also included in this rule.

Brief summaries of each proposed provision, a summary of public comments we received (with the exception of specific comments on the paperwork burden or the economic impact analysis), and our responses to the comments follow. Comments related to the paperwork burden and the impact analyses are addressed in the ''Collection of Information Requirements'' and ''Regulatory Impact Analysis'' sections in this preamble.

[3] Although we recognize that the language used here is outdated, and that ''intellectual disability'' is the appropriate way to discuss this type of disability, the Social Security Act still refers to these types of facilities in this manner.

1. 5-Year Period for Certain Demonstration Projects and Waivers (part 430)

In accordance with section 2601 of the Affordable Care Act, we proposed a 5-year approval or renewal period, subject to the discretion of the Secretary, for Medicaid waivers under sections 1915(b), 1915(c), 1915(d) and 1115 of the Act. Specifically, this time period applies for demonstration and waiver programs through which a state serves individuals who are dually eligible for both Medicare and Medicaid benefits. While section 2601 of the Affordable Care Act did not provide a new type of waiver, it did provide an important opportunity for states to simplify the operation of existing or future waivers under current authorities that serve dually eligible individuals, especially important when states combine waiver authorities that have different approval periods. The approval of such periods is at the Secretary's discretion, and determinations will be made regarding applications for 5-year waivers in a manner consistent with the interests of beneficiaries and the objectives of the Medicaid program. We proposed that if a demonstration or waiver program does not serve or excludes dually eligible individuals, the 5-year approval period will not be available under this authority, and existing approval period requirements will apply. In addition, we proposed that in order for coverage-related waivers to be approved for 5 years periods, they must meet all necessary programmatic, financial, and quality requirements.

*Comment:* Commenters on this section expressed agreement with this provision. One also requested that we be mindful of the demonstrations under the Financial Alignment Initiative for dual eligibles. Another recommended clarification that this provision would also apply to other future waiver demonstration requests by states to combine Medicare and Medicaid funding at the state level for delivering care to Medicare-Medicaid eligibles.

*Response:* This provision is available for waivers that serve dually eligible individuals, under sections 1915(b), 1915(c), 1915(d) and 1115 of the Act, and that meet all necessary programmatic, financial, and quality requirements.

*Comment:* One commenter requested that CMS make wise and appropriate use of this authority. Another commenter recommended that CMS include a statement in the regulation language like one in the preamble to the proposed rule that determinations ''be made regarding applications for 5-year waivers in a manner consistent with the interests of beneficiaries and the objectives of the Medicaid program.'' This commenter stated that one example would be a waiver that effectively reduces services for dual eligibles, which should not be approvable as it would not be consistent with the purposes of Title XIX.

*Response:* We have added ''and in a manner consistent with interests of the beneficiaries and the objectives of the Medicaid program'' to the final regulation. In the event that the state finds a need to make reductions to its program, the state would have to explain to CMS how they will account for the interest of individuals before taking such action.

2. State Organization and General Administration (part 431)

In § 431.54, we proposed to add paragraphs (a)(3) and (h) to include state plan HCBS as exceptions to comparability and community income and resource rules. For specific discussion, see the published May 3, 2012 proposed rule (77 FR 2012 through 10385).

*Comment:* Commenters requested that we clarify that under section 1915(i)(3) of the Act noncompliance with comparability or community income and resource rules is optional, not mandatory. Specifically, they requested that we modify § 431.54 (a)(3) and (h) as follows:

- For § 431.54 (a)(3): Section 1915(i) of the Act provides that if a state may provide, as medical assistance, home and community-based services under an approved state plan amendment that meets certain requirements, it may elect to do so without regard to the requirements of sections 1902(a)(10)(B) and 1902(a)(10)(C)(i)(III) of the Act, with respect to such services only.
- For § 431.54(h): State plan home and community-based services. If the state so elects, the requirements of § 440.240 of this chapter related to comparability of services do not apply with respect to State plan home and community-based services defined in § 440.182 of this chapter.

*Response:* We believe that the language in the regulation is clear and we are finalizing the rule as proposed.

3. Eligibility in the States, District of Columbia, the Northern Mariana Islands, and American Samoa (part 435) and Eligibility in Guam, Puerto Rico and the Virgin Islands (part 436)

We received several comments that were in support of the eligibility policies pertaining to the new eligibility group specified at § 435.219 and § 436.219. Commenters were pleased that the regulation offers states flexibility in providing HCBS to elderly and disabled populations who do not meet an institutional level of care. Commenters were also pleased that the methodology proposed for the new eligibility group described at § 435.219(a) & (c) did not have a resource test and that the income standard for this new eligibility group is set at 150 percent of the FPL. Comments on eligibility policies not contained in this rule are not addressed.

*Comment:* A few commenters believed that the language in the regulation should be more detailed to better reflect the language in the preamble.

*Response:* We do not believe that the regulatory language should be as detailed as the language in the preamble. The language in the preamble contains the rationale for the requirements described in the regulatory language. Therefore, we are not revising the regulatory language to be as detailed as the preamble. We will be revising the regulatory language to correct an error which inaccurately indicated that a State could cover some but not all people described in paragraph (a) or (b). The response to that comment is addressed separately.

*Comment:* A few commenters suggested that the regulation at § 435.219(c) should be revised to include a requirement that the methodology elected by the state can be no more restrictive than the SSI methodology.

*Response:* To provide states with flexibility, we are not prescribing a methodology. We will review the methodology proposed by the state to determine whether it meets the criteria set forth at § 435.219(c) and § 436.219(c). We believe that the current regulatory language is in the best interest of the beneficiary.

*Comment:* One commenter suggested revising the introductory language in § 435.219 and § 436.219 to make it clearer that a state may choose to cover persons described in paragraph (a), persons described in paragraph (b) or both sets of persons. The commenter suggested deleting the language ''any group or groups of'' because the language suggests inaccurately that a state might be able to cover some but not all of the persons described in either of paragraphs (a) or (b) of the regulation.

*Response:* We agree with the commenter. The state has the option to provide Medicaid to individuals described in one or both of the paragraphs under (a) or (b) of this

section but cannot cover some but not all of the individuals that may be eligible under either or both parts of the eligibility group. We are revising the regulatory language at § 435.219 and § 436.219 by removing the phrase ''any group or groups of.''

*Comment:* A few commenters suggested that the language in § 453.219 should be revised to specify that any income methodologies must be applied to all members of the eligibility group.

*Response:* The state must use the same income methodology for all members within the eligibility group. Specifically, if a state elects to cover § 435.219(a) the income methodology must be the same for all members determined eligible under § 435.219(a). If the state elects § 435.219(b) the state must use the same income and resource methodologies and standards that it uses for the § 435.236 (the special income level) group. As described in the previous comment, states have the option to provide Medicaid to individuals described in one or both of the paragraphs under (a) or (b) of this section.

*Comment:* One commenter commended CMS for proposing regulations to implement optional categorical eligibility for Medicaid for individuals in need of section 1915(i) of the Act services. The commenter believes that this category has the potential to help secure coverage for uninsured and underinsured individuals and will provide states with a useful option to consolidate coverage groups.

*Response:* The intent of the regulation is to provide eligibility for more individuals needing State plan HCBS not to consolidate coverage groups.

*Comment:* One commenter urged CMS to retain the regulatory language that requires states to use income standards, which are, ''reasonable, consistent with the objective of the Medicaid program . . . and in the best interest of the beneficiary.

*Response:* We are not changing this regulatory language, which is specified at § 435.219(c) and § 436.219(c).

4. Services: General Provisions (part 440)

Section 1915(i)(1) of the Act grants states the option to provide, under the state plan, the services and supports listed in section 1915(c)(4)(B) of the Act governing HCBS waivers. The HCBS may not include payment for room and board. Eligibility for this option is based upon several different factors that are either specified by the statute or that a state may define. These include financial eligibility, the establishment of needs-based criteria, and the state option to target the benefit and to offer benefits differing in type, amount, duration or scope to specific populations. Section 1915(i) of the Act provides that State plan HCBS may be provided without determining that, but for the provision of these services, individuals would require the LOC provided in a hospital, a nursing facility (NF), or an intermediate care facility for individuals with intellectual disabilities (ICF/IID) as is required in section 1915(c) HCBS waivers. While HCBS provided through section 1915(c) waivers must be ''cost-neutral'' as compared to institutional services, no cost neutrality requirement applies to the section 1915(i) State plan HCBS benefit. State plan HCBS are intended to enable individuals to receive needed services in their own homes, or in alternative living arrangements in what is collectively termed the ''community'' in this context.

*Comment:* A few commenters requested that CMS add additional services to § 440.182. One additional commenter requested that nursing services be added to the list of services specifically listed in section 1915(c)(4)(B) of the Act governing HCBS waivers.

*Response:* The services that section 1915(i)(1) of the Act authorizes states to include are the services and supports listed in section 1915(c)(4)(B) of the Act governing HCBS waivers. While we are unable to expand on this list of services, we note that the ''other services'' specifically referenced in the statute may include coverage of services not designated in the list of specific services, and gives states the flexibility to propose and define other specific services.

*Comment:* Many commenters requested that CMS add to the regulation text that ''other services'' can include services that have been, or could be, approved as ''other services'' under a 1915(c) waiver and to list specific examples, such as transition services or services for individuals with traumatic brain injury.

*Response:* ''Other services'' may include coverage of services not specifically designated, and states have the flexibility to propose and define other specific services. We will provide examples of ''other services'' in future guidance.

*Comment:* A couple of commenters requested revisions to § 440.182(c) to emphasize that the habilitation services that can be covered by the state include, but are not limited to, expanded habilitation services as specified in § 440.180(c).

*Response:* We have revised § 440.182(c) to add the phrase ''may include expanded habilitation services'' to specify that states can choose whether or not to include expanded habilitation services as defined in § 440.180(c).

*Comment:* One commenter expressed that the final regulation regarding home and community-based settings must continue to permit the full array of home and community-based services, as defined by the Medicaid HCBS statute and regulations and included in the individual's person-centered service plan.

*Response:* We agree and, as in the proposed rule, the final regulation will continue to convey this flexibility for states.

*Comment:* Another commenter applauded the flexibility given to states to not only provide *specified* HCBS benefits under the state Plan, but to also provide other services at a state's request with Secretary approval, and encourages CMS to work with states on an ongoing basis to educate, train, and support the use of this new state plan option.

*Response:* We appreciate this comment and believe that this option provides states with an opportunity to deliver long-term supports and services to individuals in need. Since implementation of this benefit, we have directly and indirectly provided states with technical assistance in the use of section 1915(i) of the Act, and we are committed to continuing to offer such assistance to states.

*Comment:* One commenter stated that CMS should not allow section 1915(i) of the Act to be used to provide instrumental activities of daily living (IADL) services while an individual is in a general acute hospital short-term stay, as this would be duplicative to the services received in the hospital and would be hard to administer without increased costs to the state.

However, another commenter was supportive of allowing HCBS to continue, as applicable for people who are temporarily hospitalized, stating that based on the needs of the individual, there could be a genuine necessity for HCBS while an individual is hospitalized in a short-term acute care setting and would not be a duplication of hospital care services:

''Some individuals may need assistance from their personal care provider to communicate their needs, medical history, redirect behaviors, and provide consistent person-directed physical assistance. Most hospitals do not have adequate, nor trained staff to provide the level and type of ongoing 'personal care' many people using HCBS

require. Providing continuation of HCBS while someone is in a hospital is not letting hospitals avoid their responsibilities, but rather acknowledging the reality that their focus/responsibility is on 'medical care', while HCBS' focus is on 'personal care'.''

*Response:* We agree with the second commenter and believe that this should remain an option afforded to the state subject to the conditions and limitations stated in our rule. To support program integrity, states are required to perform claims edits or adopt other systematic approaches that prevent duplicate payment.

*Comment:* One commenter noted that the inclusion of ''other services'' including certain transition services can make a significant difference in addressing chronic homelessness.

*Response:* We agree.

*Comment:* One commenter suggested providing FFP for rent and food expenses reasonably attributed to a related caregiver providing State plan HCBS, just as CMS proposed in the proposed rule for unrelated caregivers.

*Response:* Section 1915(i) of the Act does not include authority that would allow payment for the costs of rent and food attributable to a related personal caregiver residing in the same household as the participant.

*Comment:* One commenter asked us to clarify if there can be differences in the amount, scope or duration of services provided under 1915(i) and similarly named services provided in a section 1915(c) HCBS waiver, and whether rates or rate methodologies could differ. The commenter also asked whether there could be different provider qualifications for a covered State plan HCBS benefit and a similar covered HCBS waiver service.

*Response:* States are permitted the flexibility to define the section 1915(i) of the Act services they will include under their benefit, including the amount, duration, and scope of those services. If a proposed section 1915(i) service is also available under another Medicaid authority, states must explain how the section 1915(i) services would not be provided in duplicate, or incur duplicate payment. However, we note that while 1915(i) services are not identified in 1905(a) and are not part of the EPSDT requirement, all Medicaid-eligible children must have full access to services required under EPSDT, and the provision of section 1915(i) of the Act State plan HCBS should in no way hinder their access to such services.

With regard to rate methodologies, while rate determination methods may vary, payments for Medicaid services must be consistent with the provision of section 1902(a)(30)(A) of the Act (that is, ''payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers'') and the related federal regulations at § 447.200 through 205. If the state-established rates will vary for different providers of a service (including a service that is also available under a section 1915(c) of the Act waiver), the state must explain the basis for the variation.

Provider qualifications must be reasonable and appropriate to the nature of the service, reflect sufficient training, experience and education to ensure that individuals will receive services in a safe and effective manner, and not have the effect of limiting the number of providers by the inclusion of requirements that are unrelated to quality and effectiveness. If the state-established minimum provider qualifications will vary for a service that is also available under a section 1915(c) of the Act waiver, the state must explain the basis for the variation.

*Comment:* One commenter requested that CMS amend the language to ensure that the rule addresses individuals with disabilities across the lifespan, including children, in order to help states understand that they can serve children under the special population classification. They expressed concern that the proposed rule does not explicitly address children. They also requested that CMS add language to specify children with physical and sensory disabilities, not just those with cognitive and behavioral disorders.

*Response:* Our intention was not to exclude children with disabilities or any other population as we cited examples in the preamble to the proposed rules. The regulation text does not cite specific populations who can receive Medicaid HCBS, nor do we think it prudent to do so, as it may imply limitations on state flexibility.

*Comment:* One commenter requested that CMS allow federal financial payment for room and board costs to be included in payment for State plan HCBS, in order to make such alternatives viable for individuals who, without housing assistance, must seek institutional placement.

*Response:* The statute explicitly excludes coverage of room and board and our rule cannot override that exclusion.

*Comment:* For § 440.182(c)(8), which refers to conditions set forth at § 440.180 for persons with chronic mental illness, one commenter proposed instead a reference to § 440.180(d)(2).

*Response:* We agree that this reference is more precise and have incorporated this revision.

*Comment:* One commenter expressed support for not including the phrase ''as cost effective and necessary to avoid institutionalization,'' which appears in § 440.180(b)(9) to describe the ''other'' services that might be authorized under section 1915(c) of the Act, in § 440.182(c)(9) pertaining to section 1915(i) of the Act.

*Response:* We agree that this phrase is not appropriate to include in § 440.182(c)(9), as State plan HCBS under 1915(i) are not subject to cost neutrality.

*Comment:* One commenter indicated that the regulation text should indicate that services must be furnished to individuals with an assessed need, and must not be based on available funds.

*Response:* This is reflected in § 441.725(b) regarding the person-centered service plan.

*Income Eligibility:*

Section 1915(i)(1) of the Act requires that in order to receive State plan HCBS, individuals must be eligible for Medicaid under an eligibility group covered under the State's Medicaid plan. In determining whether either of the relevant income requirements (discussed) is met, the regular rules for determining income eligibility for the individual's eligibility group apply, including any less restrictive income rules used by the state for that group under section 1902(r)(2) of the Act.

Section 2402(b) of the Affordable Care Act added a new option at section 1915(i)(6) of the Act, to allow states, in addition to continuing to provide services to individuals described in section 1915(i)(1) of the Act, to provide section 1915(i) of the Act services to certain individuals who meet the needs-based criteria, who would be eligible for HCBS under sections 1915(c), (d) or (e) of the Act waivers or a section 1115 waiver approved for the state, and who have income up to 300 percent of the Supplemental Security Income Federal Benefit Rate (SSI/FBR).

Section 2402(d) of the Affordable Care Act also amended section 1902(a)(10)(A)(ii) of the Act by adding a new optional categorically needy eligibility group specified at section 1902(a)(10)(A)(ii)(XXII) of the Act to provide full Medicaid benefits to certain individuals who will be receiving section 1915(i) services. This eligibility group has two parts, and states can cover individuals under either or both parts of the group. Under this group, states can elect to cover individuals who are not otherwise eligible for Medicaid who meet the needs-based criteria of the section 1915(i) of the Act benefit, have income up to 150 percent of the Federal poverty line (FPL) with no resource test

and who will receive section 1915(i) of the Act services, or individuals with income up to 300 percent of the SSI/FBR, who would be eligible under an existing section 1915(c), (d) or (e)[4] waiver or section 1115 waiver approved for the state and who will receive section 1915(i) services. These individuals do not have to be receiving services under an existing section 1915(c), (d) or (e) waiver or section 1115 waiver; the individual just has to be determined eligible for the waiver.

*Comment:* One commenter indicated that there is not a lot of difference between 300 percent FBR and 150 percent FPL. In 2012 the amounts were $2094 versus approximately $1400 per month. The commenter believes that having two income levels to administer will cause more work for the states and make explaining the program more confusing. The commenter recommended that for all 1915(i) services, the income standard be 300 percent of the SSI/FBR.

*Response:* The statute does not permit the income standard to be raised to 300 percent of the SSI/FBR for all individuals receiving 1915(i) services. Electing the new eligibility group specified at § 435.219 and § 436.219 in order to provide state plan HCBS to individuals who were not previously eligible to receive these services is strictly a state option. Therefore, if a state believes that the requirements for this eligibility group are too burdensome, the state does not have to elect to cover this optional eligibility group.

*Comment:* One commenter believes that existing financial eligibility rules should remain in place.

*Response:* Electing any changes to financial eligibility set forth in this final rule are strictly a state option.

5. State Plan Home and Community-Based Services Under Section 1915(i)(1) of the Act (§ 441.710) (Proposed § 441.656) and Community First Choice State Plan Option: Home and Community-Based Setting Requirements (§ 441.530)

a. Home and Community-Based Settings Under 1915(i) and 1915(k) of the Act

To implement the statutory requirement that the benefit be ''home and community-based,'' we proposed to require in § 441.656(a) that the individual reside in the home or community, not in an institution, and that the settings must have qualities of community-based settings prescribed by the Secretary. We stated our recognition of the need for a consistent definition of this term across Medicaid HCBS, and our goal to align the final language pertaining to this topic across the regulations for sections 1915(i), 1915(k), and 1915(c) of the Act Medicaid HCBS authorities.

Section 1915(i) of the Act provides states the option to provide home and community-based services, but does not define ''home and community-based.'' Along with our overarching interest in making improvements to Medicaid HCBS, we seek to ensure that Medicaid is supporting needed strategies for States in their efforts to meet their obligations under the ADA and the Supreme Court decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). We proposed language defining the qualities and requirements for settings in which section 1915(i) of the Act services and supports could be provided and sought additional comments on this issue. Instead of attempting to provide one singular definition to encompass all settings that are home and community-based, we described the qualities that apply in determining whether a setting is community-based. We stated that we would expect states electing to provide HCBS under section 1915(i) of the Act to include a definition of home and community-based settings that incorporates these qualities, and that we would review all SPAs to determine whether they propose settings that are home and community-based.

In the proposed rule, we stated that we would permit states with approved section 1915(i) of the Act SPAs a reasonable transition period, a minimum of one year, to come into compliance with the HCBS setting requirements that are promulgated in our final rule.

Overall, we received 280 comments in response to the HCB settings section of the proposed rule regarding 1915(i) State plan HCBS and 1915(k) CFC. Commenters included advocacy organizations, individuals receiving services, family members, friends and guardians of individuals receiving services as well as providers, government entities and the general public. Because we are proposing the same requirements for home and community-based settings in regulations implementing 1915(i) and 1915(k), we are discussing comments pertaining to both in this section. The comments were mixed, with commenters providing both support and disagreement within subsections of the HCBS settings provision. A few of the issues that elicited a substantial number of comments are: qualities, integration, providers, choice, accessibility and privacy in addition to general comments.

*Comment:* We received many comments related to this section of the proposed rule. These comments are reflected as follows:

Many commenters expressed concern about the effect the criteria will have on existing home and community-based services, and expressed concern that the proposed rule will eliminate community based-services that elderly individuals and people with disabilities are currently receiving. Several commenters suggested eliminating all provisions that restrict the consumer's freedom of choice regarding the residential settings in which they can utilize their Medicaid funds, stating that the qualities and characteristics of home are determined by the individual.

Some commenters stated that affordable rental options, especially those in apartment complexes where home maintenance responsibilities are handled by the landlord, are hard to find or non-existent in some communities. They indicated that lack of affordable housing is a huge challenge for people seeking to live in the community while being supported for severe disabilities, and that many individuals who experience multiple disabilities need housing that is tailored for their specific physical needs. These commenters stressed that group homes that were built and owned by a third party, specifically for the purpose of serving people with disabilities, would not be available if they tried to rent on the open market and that ruling out such homes for HCBS funding imposes further hardship and segregation on the population in need of HCBS.

One commenter believes the requirements will drive up costs.

Some commenters believe that the changes would effectively eliminate their freedom to provide their adult child a setting that is protected from exposure to community members that do not understand the effect of a community's environment on individuals with disabilities.

One commenter indicated that if adopted, the criteria would have a significant adverse impact on its ability to continue to serve individuals with the most significant disabilities in the community. The language included in the proposed regulation would: (1) Thwart informed choice by negating or severely restricting longstanding program options and opportunities to provide services and supports expressly authorized by the HCBS provisions of

[4] 1915(d) and (e) waivers are State options to provide HCBS to the elderly and to individuals with disabilities, respectively. Currently, no State elects to provide services under either of these authorities.

the Medicaid statute and regulations; and (2) Significantly restrict state flexibility to respond to identified needs of Medicaid beneficiaries.

Some commenters stated within the broad disability community, different groups have different needs and desires and any definition of home and community-based needs to be broad enough to encompass these divergent needs and desires with one not outweighing others. They indicated that it may not be possible to have a single definition to meet these needs.

One commenter stated that the standards proposed for home and community-based settings are impractical, overly prescriptive, inappropriate for persons with cognitive impairments and neurobehavioral challenges, and cannot be delivered at a rate that states and taxpayers can afford.

Another commenter disagreed with eliminating congregate care options and requested CMS clearly state policies which encourage states to operate a range of services for people with disabilities which reflect the diversity of their care and that of their families, including congregate care.

Several commenters disagreed with the notion embedded in the CMS proposal that ''community based'' can only be defined as a totally independent setting or small stand-alone group home in an urban or suburban environment.

We received many comments supporting the proposed criteria. These indicate that the criteria are a step in the right direction and support the goal of HCBS to assist individuals to be able to live fully in the greater community. One of these commenters stated that the criteria proposed appropriately establish the essential elements of resident autonomy and person-centered care.

Many commenters stated their belief that the provisions are key to assisting states with complying with the *Olmstead* decision. One recommended that the regulation quote verbatim the conclusion of the *Olmstead* decision and that reference to the ''integration mandate'' in the final regulation restates actual language in the ADA regulations for instance, ''most integrated setting appropriate to the needs of qualified individuals with disabilities.''

Another indicated that the requirements appropriately ensure that individuals have control over their care environment while also making allowances for serving people with cognitive disabilities. Several commenters stated that the rule offers appropriate flexibility to ensure that individuals can remain in the community for as long as possible.

Many commenters commended CMS for its efforts to promote the rights of people with disabilities to live in the most integrated setting possible. They stated that the proposed rule has the potential to improve the care of many adults and children in the public mental health and developmental disabilities system.

A few commenters stated that making an institutional setting more ''homelike'' does not mean that it becomes community-based, and that the intent is to ensure that people with disabilities have more self-direction and ability to govern and control important components of their personal living environment.

One commenter stated appreciation and support for criteria that support individual choice, the ability for a recipient to exercise control over his or her immediate environment and day to day activities, and that do not restrict the individual's ability to live in the community in which his or her residence is located. However, the commenter is concerned that residency in some of the more creative congregated living arrangements may be disqualified. The commenter added that CMS should be as flexible as possible to ensure that these homes are able to continue to support individuals with disabilities and illnesses in the least restrictive environment possible.

*Response:* We appreciate all of the comments submitted. We believe the requirements we are finalizing are critical to ensure that individuals have the opportunity to receive services in a manner that protects individual choice and promotes community integration. Individuals who are elderly and/or disabled who commented made it clear that their personal rights should not be curtailed because of where they live or because there is a need to receive HCBS. It is not the intent of this rule to prohibit congregate settings from being considered home and community-based settings. State plan HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule (except for HCBS that may be delivered in an institutional setting, such as institutional respite). Also, since this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals must be living in settings that comport with the HCB setting requirements as set forth in this rule. We acknowledge that for some settings, implementing these requirements will require a change to operational protocol, and perhaps changes to licensure requirements, but we believe that the requirements are achievable and provide for reasonable transition time to facilitate such changes as may be necessary. We are committed to working with states as they examine their systems and develop plans to bring their HCBS programs/benefits into compliance.

*Comment:* One commenter noted that Medicaid reimbursement for room and board is expressly prohibited, yet the criteria laid out in §§ 441.530 and 441.656(a) are primarily focused on considerations of what is a beneficiary's room and board choice and therefore arguably outside CMS' authority to regulate. This commenter stated that CMS lacks authority to regulate these features of alternative housing arrangements for which it does not provide reimbursement and requested that CMS clarify under what authority CMS can mandate physical structure alternative housing requirements and whether such authority extends to non-provider controlled alternative housing arrangements. Other commenters stated that creating an exhaustive list of potential requirements will be difficult and suggested that CMS carefully consider the wide range of states' specific programs over the next year before providing guidance through a State Medicaid Director letter.

*Response:* While we do not regulate housing, we are required to determine whether Medicaid State plans and waivers comply with the statutes authorizing the provision of medical assistance. In authorizing HCBS Medicaid expenditures, we must ensure that such settings are home and community-based.

*Comment:* We received many comments in response to our request for input on whether the regulation should be modified to prohibit housing providers from requiring individuals to receive services from that provider, or requiring an individual to receive a particular service as a condition of living or remaining in the setting. Many commenters believe that housing should not be conditioned upon the acceptance of services and believe that individuals should have the right to choose their living environment, as well as their supports and services. Some commenters expressed concern that such an arrangement is inconsistent with the requirement that Medicaid beneficiaries have a free choice of provider. Other commenters believe that if assisted living facilities, and other congregate settings that bundle housing and services, were required to separate housing and services, those providers could maintain their customer base by providing services of a quality that appeals to individuals, not by taking

advantage of a captive pool of residents. Others expressed concern that people would become homeless or institutionalized because the services they require change, and individuals are not given the opportunity to age in place. Some commenters believe that individuals should have the opportunity to make their own decisions about where they live, free of any coercion. One commenter supporting the restriction acknowledged that compliance with such a provision would require monumental changes to certain business models and service delivery systems and that such a change may be beyond the scope of this regulation. Overall, the commenters supporting the prohibition believe that individuals with disabilities deserve choice among livable options and control over the space they call home. Alternatively, we received comments opposing a separation of housing services requirement, stating that it is too restrictive. Some commenters expressed concern that such a requirement would limit a provider's ability to evict tenants who become a threat to other tenants and staff or repeatedly refuse a particular service that would treat their medical condition. Other commenters believe that while the inclusion of this criterion is important in some settings, such as an individual's home or apartment, it should not be applied to settings such as group homes or assisted living residences, where the provision of services is inherent in the setting. Several commenters suggested that instead of modifying the regulation to require separating housing and services, this issue could be handled in a different manner, such as the use of resident agreements in specific residential settings or through the person centered planning process. Commenters believe that this regulation should not preclude reasonable conditions for residency that are consistent with the rules of the regulating agency. There is also concern with the effect such restriction could have on specialized programs, such as those targeted toward the homeless population. Such programs include residential services and require individuals to maintain sobriety. Other commenters expressed concern regarding how such a requirement would be operationalized in assisted living facilities whose model is to provide both housing and services. In such settings, multiple service providers and multiple staff with multiple lines of authority, sorting through oversight and management issues becomes very complex. A few commenters suggested that CMS should provide guidance that as a matter of practice, individuals should not be locked into a particular service package as a condition of their receipt of housing services. Other commenters suggest that in arrangements where placement is contingent on acceptance of a specific program, it should be clearly specified as part of the person-centered planning process that individuals have been apprised of all alternatives and that the decision to accept the placement is free from coercion. The commenter notes that adult care and assisted living facilities are also guided by state regulations and in most cases these regulations indicate that residents may not reside in the facility if they are a threat to themselves or others. The commenter explains that if a facility fails to ''discharge'' a resident to a more appropriate environment, the facility may be in conflict with those state regulations, running the risk of being cited with a deficiency or endangerment, which can threaten its viability.

*Response:* Upon consideration of the thoughtful comments submitted, we are not requiring the separation of the housing provider from the provider of HCBS. Commenters provided compelling arguments both in support and against the proposed prohibition. We recognize that the needs of the individuals receiving HCBS vary greatly. Just as there should be a variety of service options to meet those needs, there should be a variety of residential options as well. We agree with commenters that the issue of choice regarding the provision of services can be addressed as part of the person-centered planning process and reflected in the individual's person-centered service plan. States must ensure that when an individual chooses a home and community based setting, the individual has made an informed choice among options. In the event the individual has made an informed choice to reside in a setting that provides both housing and services, the individual must acknowledge that he has also chosen that provider to be the service provider. Our decision not to require the separation of housing and services in the final rule does not preclude a state from structuring its service delivery system to promote separation. Nor does it preclude a provider from allowing for such an arrangement if all parties agree, and the arrangement does not violate state licensing requirements. At this time, we do not believe that there should be a federal mandate requiring such a separation.

*Comment:* Several commenters requested that § 441.656(a)(1)(vi) be modified to include a ''right to refuse service'' provision. One commenter suggested the following modification ''in a provider-owned or controlled residential setting, that receipt of any particular service or support either from the provider/owner or other qualified provider cannot be a condition for living in the unit and that this shall mean that the owner of the unit cannot terminate occupancy/tenancy of someone for not agreeing to participate in a particular service.'' A few commenters suggest that if CMS decides against including a ''right to refuse service'' provision, then a narrow exception should be provided, allowing the requirement to be waived only for substance abuse treatment services, on the grounds that such treatment services are distinct in character from other forms of service provision focused on ADLs, IADLs, etc. One commenter believes that while providers should receive adequate reimbursement for housing and services, the individual should be protected against restrictive (service utilization) requirements for tenancy and should maintain the right to elect, receive or deny services without risk of eviction. Another commenter indicated that this interpretation could have an effect on residential settings as some of these settings include a structure in which individuals are required to participate in treatment (substance use, for example) as a condition of residing in the unit. Overall, the commenters believe that individuals should not be forced to move out of their homes because they do not want a particular service offered by the provider.

*Response:* We do not believe that a ''right to refuse'' provision is necessary as it is a basic tenet of the Medicaid program that individuals cannot be compelled to receive any Medicaid service. Additionally, we believe the requirements specified under the person-centered planning process, and the requirement at § 441.530(a)(1)(iii) and § 441.710(a)(1)(iii) that an individual is free from coercion and restraint, achieve the same purpose as a ''right to refuse'' provision. Although Medicaid beneficiaries have the right to refuse a service, we recognize that depending on the setting, rules other than those of the Medicaid program may be applicable and may reflect health and safety concerns related to the refusal of services. We plan to issue additional guidance on how other components of this regulation can be useful tools in addressing such concerns.

*Comment:* Several commenters recommend that the proposed regulation be amended to reference the ADA, which generally requires a provider to accommodate a resident's needs by making necessary services available to the extent that those accommodations are setting-appropriate and are not legally prohibited. Commenters believe that this type of accommodation should be required in a community-based setting, as it values the individual's interest in staying in the home over the facility's interest in limiting the care needs that must be met.

*Response:* The requirements of this rule do not replace or override the requirements of the ADA. There are already a few general provisions in our regulations that prohibit discrimination in State Medicaid programs on the basis of nationality, disability, etc., (§ 430.2, § 435.901, § 435.905, and § 435.908). As these regulations apply in determining eligibility and administering the Medicaid program generally, it is not necessary to add a regulation on this subject specific to section 1915(i) of the Act.

*Comment:* One commenter suggested that clear contracts and boundaries need to be defined in order to recognize that no matter the setting, that location is the individual's home.

*Response:* We agree with the commenter that regardless of the type of setting, the location is the person's home.

*Comment:* One commenter suggested CMS include the concept of ''aging in place,'' as defined by the Center for Disease Control. The commenter believes that regardless of whether or not the setting is provider-owned or controlled, individuals should be protected by a reasonable accommodation requirement in their current settings as their needs change in order to prevent individuals from being evicted or losing their home. The commenter further suggests that individuals should also have access to an appeals process through an objective third party to dispute decisions about terminations of agreements and evictions.

*Response:* We do not believe this support requires a change to the regulations. The requirements set forth in this final rule also address the commenters' additional suggestion regarding an appeals process for evictions and terminations of agreements.

*Comment:* One commenter indicated that their state has a long history of providing services that are institutionally-based, with misplacement of younger people in adult care homes that are for the frail elderly. This commenter urged CMS to ensure that individuals have assessments of need to ensure they are not placed in the wrong settings.

*Response:* Sections 1915(c), 1915(i) and 1915(k) of the Act all require that individuals have an individual assessment of needs that includes the individual's needs, strengths, preferences and goals for services and supports provided under the respective authorities.

*Comment:* One commenter appreciates CMS noting in the preamble to the proposed rule the other authorities for providing Medicaid services in certain institutional care settings (such as SNFs and ICFs), but notes that this should not be construed to mean that assisted living can or should be lumped with SNFs simply because both provide regulated services in a congregate setting. The commenter does not support the premise that residents of assisted living settings should ''fall back'' on the institutional model in order to access Medicaid services.

*Response:* It is not our intent to imply that all congregate settings should be categorized as nursing facilities and/or intermediate care facilities for individuals with intellectual disabilities. State plan HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule (except where HCBS are permitted to be delivered in an institutional setting, such as institutional respite). Also, since this authority provides states the opportunity to provide individuals with HCBS and not institutional services, individuals must be living in settings that comport with the HCB setting requirements as set forth in this rule. Settings that do not meet the requirements may be qualified to provide institutional services.

*Comment:* One commenter suggests that states should consider whether individuals have meaningful options among settings located in the community, which afford them the choices that are integral to some of the qualities that define HCB settings. The commenter suggests that states should collect data on the choices and expressed preferences of Medicaid beneficiaries who require HCBS and set goals to build adequate infrastructure to meet these needs.

*Response:* We appreciate the commenters' thoughtful suggestions. The regulation already requires that the setting be selected by the individual from among housing options, and that the individual's choice is documented in the person–centered service plan. We will not revise the regulation to include the commenter's suggestion to require states to use the data on the choices and expressed preferences to set goals to build adequate infrastructure to meet these needs; however, we will consider that suggestion as we develop future guidance.

*Comment:* One commenter agreed that these requirements should apply to other HCBS funding streams such as the section 1915(c) waiver program.

*Response:* We appreciate the commenter's support. As stated in the preamble of the proposed regulation, these requirements will also apply to section 1915(c) of the Act Home and Community Waiver programs and the section 1915(k) of the Act Community First Choice state plan option.

*Comment:* One commenter stated that individuals should not be forced to live in the community, as this might not always be the individual's preference.

*Response:* This requirement does not require individuals to live in the community to receive necessary Medicaid services. Medicaid services are available in a variety of settings. This regulation sets forth requirements that must be met for individuals to receive services under sections 1915(i), (c) and (k) of the Act.

*Comment:* We received many comments supporting the proposed language. Several commenters support CMS' efforts in aligning HCBS setting qualities under sections 1915(i) and 1915(k) of the Act and agree with the proposed list of qualities for home and community based settings at § 441.656(a)(1) of the proposed rule that promote patient autonomy, dignity, choice and preference. Several commenters believe the provisions are strongly reflective of the belief that home- and community-based services should be organized in a person-centered manner, driven by the needs and preferences of the individual and that those services acknowledge the rights of the individual to ''privacy, dignity and respect''. Several commenters generally believe that the provisions establish the essential elements of autonomy and person-centered care in a way that promotes choice and independence. Many commenters believe that the list of qualities promotes integration of people with disabilities into the greater community and does not restrict individuals with disabilities. One commenter recognized the policy on this issue is complicated and believes that the proposed language is a big improvement over previous proposals.

*Response:* We agree and appreciate the commenters' support.

*Comment:* A few commenters asked if the rule applies to private homes and non-residential community settings where services may be provided, such as adult day settings or day habilitation settings.

*Response:* 1915(i) State plan HCBS and 1915(k) CFC services (for example, residential, day or other) must be delivered in a setting that meets the HCB setting requirements as set forth in this rule. We will provide further guidance regarding applying the regulations to non-residential HCBS settings. In addition, since this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals receiving 1915(i) State plan HCBS or 1915(k) CFC services must be living in settings that comport with the HCB setting requirements as set forth in this rule regardless of whether they are receiving HCBS in that residence. This is consistent with CMS' longstanding policy regarding 1915(c) HCBS. We are unsure what the commenter means by the term ''private home'' but a residence owned or leased by an individual for his or her personal use would generally meet these criteria.

*Comment:* One commenter suggests that CMS should consider requiring and monitoring state reporting on measures related to the qualities of home and community-based settings. The commenter suggests alignment with section 1915(i) of the Act quality and reporting standards. An alternative approach also suggested by the commenter is for CMS to require a Memorandum of Understanding (MOU) between state agencies documenting how they will work together to ensure consistency with the quality requirements.

*Response:* Sections 1915 (c), (i) and (k) of the Act all require states to demonstrate at the time of approval that they have a quality improvement strategy that includes performance and outcome measures for the HCBS, including measures for the HCB setting requirements. We are currently working towards a streamlined approach to be used across Medicaid HCBS.

*Comment:* One commenter recommended the rule be revised to include a requirement that individual choice regarding supplementation of services and supports and who provides them is facilitated, if providers meet all applicable requirements of the licensed entity.

*Response:* We do not believe it is necessary to add language addressing provider qualifications to this provision. Implementing regulations for sections 1915(c), 1915(i) and 1915(k) of the Act all include provisions that address provider qualification requirements.

*Comment:* Several commenters indicated that people with disabilities should have the same rights, responsibilities and protections as nondisabled people have under every state's Landlord and Tenant Law. One commenter indicated that their state's landlord and tenant laws currently in place are sufficient to satisfy the requirements of the regulation (absent a court order, a person may not be involuntarily evicted even if they need a higher level of care, are delinquent in payment or create significant disruption for others living in the congregate setting). Another commenter indicated that their state's landlord tenant law must operate equally for everyone.

*Response:* We believe these comments are consistent with the intent of this regulation. We note that we do not have the authority to require states to modify their landlord and tenant laws.

*Comment:* One commenter suggested that CMS should clarify that all settings in which the individual does not have a regular lease or full ownership rights should be considered ''provider-controlled.''

*Response:* Any setting where the provider of HCBS also owns and operates an individual's residential service is considered provider-controlled.

*Comment:* A few commenters indicated that because there is no definition of an individual's ''sleeping or living unit'' it is unclear what area the individual's rights pertain to. The commenters requested clarification that the ''unit or room'' to which the person is legally entitled is at least the space to which the rights in § 441.530(a)(1)(vi)(B)(*1–3*) should apply.

*Response:* The requirements set forth at § 441.530(a)(1)(vi)(B)(*1–3*) apply to the sleeping or living unit that is used by the individual, and is not a common area used by others residing in the setting.

*Comment:* One commenter indicated that their state's landlord-tenant laws and their housing with services regulations both apply to their housing with services settings and the commenter wants to ensure that anything that is finalized by CMS does not negatively impact the consumer based system developed over the last two decades in that state.

*Response:* The proposed language specified that ''the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city or other designated entity.'' However, we heard from many commenters that depending on the state, tenant law may not apply to congregate settings, such as group homes or assisted living facilities. To address such situations, we revised § 441.530 and § 441.710(a)(1)(vi)(A) to add the following language: ''For settings in which landlord tenant laws do not apply to such units or dwellings, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law''. In all instances, these agreements must address eviction processes and appeals. In summary, we believe that our language creates a minimum requirement, but allows states to use existing laws or establish new laws as long as they meet our minimum requirements.

*Comment:* One commenter found it difficult to support this requirement based on the fact that each designated entity in the same state can have different tenant laws.

*Response:* It is expected that states would establish policy and procedures to assure compliance with this provision.

*Comment:* One commenter indicated that it might not be appropriate to require all provider-owned and operated settings be subject to local landlord and tenant laws or to meet all the requirements in § 441.530(a)(2)(v) adding that for some individuals with chronic mental illness or cognitive impairment, this strict requirement may exclude the least restrictive environment in which they can reside. The commenter indicated that CMS and state Medicaid agencies can use the other provisions in § 441.530 to insure that settings in which residents receive services are designed to facilitate the actual integration of the individual in the surrounding community without prohibiting some residences that are provider-owned or controlled from providing residential support to recipients.

*Response:* We have modified the regulation to include language to address situations in which state landlord/tenant rules do not apply.

*Comment:* One commenter requested clarification as to whether the provider has to hold the space when the terms of the lease are broken and there is no payment of rent and suggested that CMS use the typical landlord tenant language.

*Response:* It is beyond the scope of this regulation to address issues such as when the terms of a lease are broken or rent is not paid. This regulation defers to the state and local law, as applicable. Absent applicable state or local law, the regulation provides minimum requirements that the state must make sure are in place to inform individuals of the eviction process and the process to appeal the eviction.

*Comment:* One commenter noted that if the provider cannot evict the individual from provider controlled housing all the other residents may suffer and require new housing arrangements. The commenter stated that providers of services have experience balancing the rights of multiple residents and added that there are circumstances when eviction is in the best interest of all residents.

*Response:* This regulation is not intended to override existing rules governing adherence to proper eviction procedures. This rule requires that individuals receiving Medicaid HCBS who are in provider owned or controlled settings have the same or comparable protections related to evictions as individuals not receiving Medicaid HCBS.

*Comment:* One commenter asked about situations where the individual decides to participate in an activity that is contrary to the person-centered plan, putting the individual in danger, and asked who is liable for the outcome of the risky behavior. The commenter also wanted to know if, when all parties have agreed to a plan and the individual receiving supports departs from that to which s/he has agreed, the provider has standing to require the individual to adhere to the plan and may take steps to ensure compliance.

*Response:* We appreciate the commenter's questions. There is an expectation that individuals and providers will adhere to the services and activities identified in the person-centered service plan. If individuals place themselves or those around them in danger, we expect the state and provider to take the appropriate action necessary to address the situation. However, after the immediate crisis is resolved, we would expect a reassessment of needs to occur using the person-centered service planning process and an update to the person-centered service plan.

*Comment:* Many commenters expressed concern that the application of landlord/tenant law would create a conflict with state licensing laws governing assisted living providers or other congregate settings, and indicated that the state licensure laws protect individuals from arbitrary eviction and define the circumstances in which a provider may and may not discharge an individual. The commenter added that providers have an obligation to take all reasonable steps to accommodate an individual before seeking a discharge, and recommended that CMS consider the logistical and technical difficulties in referring to state, county or city landlord/tenant laws, as these vary significantly and would subject providers in different areas of the same state to different standards depending on where they are located. The commenter indicated that it would be burdensome for a state to create an HCBS program that would take into account all the variations when trying to meet these requirements, and suggested that providers that are not licensed under an existing state licensing law be required to only adhere to the state landlord/tenant law, to create uniformity and avoid the administrative difficulties created by including county and city laws. One commenter added that the legal relationship between a provider and a resident is very different than that of a landlord tenant relationship, as landlords typically do not provide, nor are required by law to provide, food, housekeeping or assistance with ADLs pursuant to a rental agreement. The commenters recommend that in lieu of mandating eviction protections under landlord tenant laws, assisted living facility resident protections be provided through specific disclosure provisions as part of the resident agreement and approved by the applicable state licensing authority. The commenter added that such provision would specify the terms and conditions for move-in, including conditions for discharge or transfer and an appeals process for resolving disputes that are non-emergency in nature.

*Response:* We are pleased to hear that states have robust beneficiary protections included in the licensing requirements of certain settings. It is not our intent to replace a state's current system. The intent of the language was to assert the expectation that for a setting to be considered home and community-based, residents of provider-owned or controlled residential settings must have comparable protections available to them as those provided under the landlord tenant law of the state, county, city or other designated entity. As a result of the comments received, we have added to this requirement, for settings in which landlord tenant laws do not apply, that the state must ensure that a lease, residency agreement or other form of written agreement is in place for each participant and that such agreements provide protections that address the eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

*Comment:* One commenter believes the § 441.530 (a)(1)(vi)(A) should be revised to permit discharge when an individual's condition changes and care needs can no longer be met under the license of the dwelling they occupy adding that there is nothing in the regulation that abolishes the Keys amendment requirements for SSI recipients or HCB waiver recipients.

*Response:* While we understand that there may be circumstances in which an individual's needs require a different level of service, we expect that the assessment of functional need, the person-centered plan and the availability of HCBS will be able to address an individual's changing needs. If it is determined that eviction or an involuntary discharge is necessary, the state must ensure that proper procedures for such actions are followed and individuals are fully informed of their rights.

*Comment:* One commenter wanted to know if it is the responsibility of the provider to assist the individual in finding other housing, services, and supports.

*Response:* The state is responsible for addressing this assistance through the person-centered planning process.

*Comment:* One commenter recommends the regulation require that states and providers delineate (a) the conditions under which an individual may be involuntarily moved from a setting he or she prefers, and (b) the methods by which the individual will be informed of such conditions at the time the individual chooses the setting.

*Response:* The regulation has been modified to provide that, in circumstances where tenant landlord tenant laws do not apply, a lease, residency agreement or other form of written agreement must be in place that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. Under circumstances where tenant landlord rules do apply, the state will ensure compliance with those rules.

*Comment:* One commenter indicated that their state requires a contract between the residents and providers and wanted to know if it could be used in lieu of a lease.

*Response:* It is possible that this arrangement would comply with the revised language allowing other forms of

written agreements to implement protections that are at least minimally comparable to the protection provided under the jurisdiction's landlord tenant law. A final determination of whether such contracts comply with the regulatory requirements will be made through the state plan amendment or waiver review process.

*Comment:* One commenter indicated that current requirements in their State allow for adequate service planning and transition (30-day notice) when a provider is unable to meet the needs of an individual, and the State suggested that the proposed rule reflect a similar requirement.

*Response:* We believe it is a good protection to include, however, we do not propose to amend the regulation to require a specific timeframe. We would like the state to retain flexibility in establishing timeframes.

*Comment:* Two commenters indicated that in their state, the assisted living model separates the assisted living services from housing. The commenters noted that providers of assisted living services are licensed and the services must be provided in a ''Managed residential community'' consisting of individual apartments where residents can continue to live and maintain personal autonomy. The commenters added that residents are considered tenants and are protected under the state's landlord tenant laws and that under this arrangement the assisted living services provided within the managed residential community are regulated by state licensure laws. The commenters requested that the rule recognize laws and state licensure laws and regulations that govern the provision of HCBS in their state.

*Response:* We believe the regulation allows for this.

*Comment:* Many commenters requested further clarification of the ''specific physical place'' language. In general, the commenters support the idea that individuals in congregate settings should have agreements for a specific room or unit and should not be arbitrarily moved around by providers. However, the commenters note that landlord tenant laws vary tremendously by state and their application to specific residential arrangements tends to be fact specific and subject to complex statutory and judicial interpretation. The commenters also note that the federal Fair Housing Act prohibits discrimination in almost all housing activities based on disability and requires housing providers to make reasonable accommodations to rules and policies when such accommodations are needed for the individual to use and enjoy the housing. The application of the fair housing laws to residential settings that are also subject to state licensure and regulatory schemes can be complex, and the law in this area is continuing to develop. Additionally the state's ''level of care'' licensure standards that require the discharge of residents with certain types or acuity of conditions are at odds with civil rights protections designed to allow consumers to live and receive services in places they choose. Providers are not required to make accommodations where to do so would result in an undue financial and administrative burden or would fundamentally alter the nature of the provider's operations. However, providers and state licensing agencies are required to make reasonable accommodations to enable people to remain in the homes that they choose if the accommodations meet those tests. The commenters suggest that state plan amendments and waiver applications should specify processes by which they would make ''reasonable accommodations'' decisions without forcing residents to make claims in court or forcing providers to jeopardize their licensure by reasonably accommodating residents whose service needs have intensified, for example. Reasonable accommodations processes should provide plenty of notice and be easily used. A number of states have enacted interactive processes to provide appeals and individual determinations of the ability to remain, even if their continued residency represents a violation of the level of care requirements. Finally, a legally enforceable agreement under this subsection should include a right to appeal decisions affecting tenancy. Agreements should clearly specify the conditions that would trigger a termination, including conditions related to the person's health status or level of disability that would necessitate a move. The individual should have the right to appeal termination decisions to an objective third party in a timely manner, such as 30 days, which should be defined in the state's waiver application. This appeals process should be accompanied by the reasonable accommodation process noted above. Other commenter's recommended that if a state's licensing standards do not include such protections, then the landlord tenant statutes should be the default law. Several commenters recommended the following language: ''An individual has, under state licensing law, protections from evictions. If these protections are not provided, the individual shall have, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, country, city or other designated entity.''

*Response:* We appreciate the commenter's thoughtful comments highlighting the complexities of applying tenant landlord rules to settings that normally do not have such an application. The regulation has been modified to specify that in circumstances where landlord tenant laws do not apply, a lease, residency agreement or other form of written agreement must be in place that provides at least comparable protections to those provided under the jurisdiction's landlord tenant law. At a minimum, these agreements must address eviction processes and appeals. Under circumstances where tenant landlord rules do apply, the state will ensure compliance with those rules. We are not amending the regulation to include specific language referencing state licensing laws. Rather we have amended the language to add ''For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.''

*Comment:* One commenter recommended replacing the proposed language ''the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the state, county, city or other designated entity'' with the following:

> (A)Individual has a lease, residency agreement or other form of written agreement that includes the ability to appeal move-out decisions to an objective third-party. Reasonable accommodations are made both by the provider and the state to accommodate aging in place. An appeal of a move-out decision should not prevent the move-out when there is a significant risk of harm to the resident, other residents, or staff. The appeal process will include nonpayment of fees unless the state has a demonstrated alternative process for addressing payment disputes. All appeals should be pursued expeditiously and should not take longer than 30 days.

*Response:* We appreciate the commenter's recommendation, however we do not believe it is appropriate to include as a requirement. We note that the suggested language represents some good practice, and would encourage states to include such protections in

their policy and procedures if they do not already exist.

*Comment:* One commenter recommended the following changes to the proposed language: ''The unit or room is a specific physical place that, if a 'family care home', includes a private bedroom, and if not a 'family care home', includes, at a minimum, its own kitchen facilities, sleeping area, and private bathroom with toilet, sink and shower or bathtub, that can be owned, rented or occupied . . .''

*Response:* We appreciate the commenter's suggestions, however, we will not revise the rule to include these types of specifications as they would be overly prescriptive.

*Comment:* One commenter requested that we revise the regulation to specify that the unit can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services ''or his/her chosen surrogate, who must not be an agent of the service provider,'' could be inserted.

*Response:* We do not believe the commenter's recommendation to add language regarding a surrogate is necessary. The HCBS regulations already address this in the definition of individual's representative.

*Comment:* Several commenters supported giving individuals who receive HCBS in provider-owned or operated residential settings protections under landlord tenant law, and suggested adding protections afforded by the ADA to this section to ensure that individuals living in these settings whose health needs change are afforded appropriate accommodations (such as increased staff), in order to continue living in the setting.

*Response:* While we do not administer or enforce the ADA, we note that Medicaid regulations prohibit discrimination in State Medicaid programs (§ 430.2, § 435.901, § 435.905, and § 435.908). As these regulations apply in determining eligibility and administering the Medicaid program generally, it is not necessary to amend this regulation on this subject.

*Comment:* A few commenters recommended the word ''unit'' be replaced with ''room'' throughout the document.

*Response:* We do not agree with the recommendation to remove the term unit, but to provide additional clarification, we have revised the language to add the term ''dwelling'' since this is the common term used under prevailing state and local landlord/tenant laws.

*Comment:* Several commenters agreed with the list of requirements for provider owned and controlled residential settings. One commenter added that preservation of the right to privacy, including having a lockable unit and the ability to control access to the unit, and self-control of the participant's schedule, are also important indicators for basic human dignity. Another commenter noted that individuals with disabilities should be afforded the same rights as anyone else in the country.

*Response:* We agree and appreciate the commenter's support.

*Comment:* One commenter indicated that ''the freedom to furnish and decorate their sleeping or living unit'' could use clarification noting that there are many landlords that have restrictions on water beds, or permission prior to painting. The commenter added that all rules relating to entrance locks, roommates, furniture preferences, daily schedules, food, visitors, etc., must include caveats as to feasibility and reasonableness.

*Response:* These requirements pertain to settings that are owned or controlled by a provider. Landlord tenant laws may allow landlords to set reasonable limits as long as the limits are not discriminatory or otherwise deny rights granted to tenants under the state law. Therefore, we have added additional language to this requirement to clarify that, in a provider-owned or controlled setting, the individual's freedom to furnish and decorate sleeping or living units may contain limits within the scope of the lease or agreement.

*Comment:* One commenter expressed support of the criteria when an individual lives alone, but wanted to know in situations where an individual chooses to live with a roommate who is responsible for collaborating schedules and ensuring that one person's right to have visitors does not infringe on the privacy of the other.

*Response:* While this is not specifically addressed through regulation, we note that there are many ways to address this concern, including through good roommate communication.

*Comment:* Several commenters recommended that ''their'' be changed to ''the,'' since ''individual'' is singular but ''their'' is plural.

*Response:* We agree with the commenter and have revised the regulation accordingly.

*Comment:* One commenter noted that individuals requiring care and services will have their privacy limited in some fashion while those care and services are being provided and suggested the following revision to § 441.530 and § 441.656(a)(1)(vi)(B): Each individual has privacy in their sleeping or living unit, to the extent care and services are provided in accordance with the individual's assessed needs.

*Response:* We do not believe the recommended revision is necessary as there is a general requirement that services are provided in accordance with an individual's assessed needs. This requirement is expressed at § 441.530(a)(1) and § 441.710(a)(1) and also under person-centered planning provision of the regulations for sections 1915(c), 1915(i) and 1915(k) of the Act.

*Comment:* A few commenters disagreed with the proposed language requiring that units have lockable doors. The commenters believe that this requirement poses a safety risk in the event of an emergency and added that clarification is also needed on a unit owned by the resident who may not want to provide the appropriate staff with keys to his/her door. The commenters pointed out that in some apartment buildings the entrance door is the unit's door and asked if the resident owns the unit whether he/she will be required to provide appropriate staff with keys.

*Response:* We disagree that the recommended change is necessary. However, the requirement for a lockable entrance door may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan. Additionally, the state must ensure adherence to requirements set forth at § 441.530(a)(1)(vi)(F) and § 441.710(a)(1)(vi)(F).

We would like to clarify that this regulation does not require individuals to provide keys to anyone. The language is meant to curtail the issuing of resident keys to all employees or staff regardless of the employee's responsibilities, thus granting employees unlimited access to an individual's room. This provision indicates that only appropriate individuals should have access to an individual's room. For example, it may be appropriate for the property manager to have keys, but it might not be appropriate for the individual working at a reception area.

*Comment:* One commenter recommended the additional phrase ''if necessary'' be added after ''appropriate staff,'' as there may be occasions when the particular setting will not have staff members holding keys to living units. Several commenters recommend adding the phrase ''as appropriate'' at the end of the provision since there may be times when a setting will not have staff members with keys to living units.

*Response:* We agree with the second commenter's concern and have

modified the regulatory language accordingly to indicate ''as needed.''

*Comment:* Other commenters advised that they support lockable entrance doors with appropriate staff having keys to doors, since there are also provisions under the individual modification of requirements discussed below that can be used for individuals with cognitive impairments for whom lockable doors and free egress may present safety and other issues. In such cases, alternative means for assuring meaningful individual privacy should be required (for example, knocking and waiting for a reply before entering a person's private space, respecting private possessions, etc.).

*Response:* We appreciate the commenter's support.

*Comment:* Two commenters expressed concern that the regulation does not specify a process to determine which staff will have keys, or that the individuals themselves must have keys. One of the commenters is aware of instances where people have been denied key access to their own homes without appropriate justification. The commenter recommended that CMS add language to require that (1) the staff that will have keys are included/identified in the person-centered service plan and chosen by the individual and (2) the individual must also have a key to the door. The commenter recommended the following language: ''Staff holding keys will be named in the person-centered service plan and individuals must have keys to their own units'' to § 441.530(1)(vi)(B)(1), § 441.656(1)(vi)(B)(1), and § 441.665(b)(3) for clarity across the regulations.

*Response:* We do not agree that the regulation should require that the person who has keys should be identified in the person centered plan, but we do agree that the individuals should have a say and agree with who that person is. We agree with the recommendation that individuals have keys to their door, and have clarified the language in the appropriate sections of the regulation so that this is unambiguous. As noted above, an individual's use of the room key may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan.

*Comment:* One of the commenters requested that CMS clarify whether the proposed rule requires the homes to be locked or the bedroom doors to be locked.

*Response:* We would like to clarify that the individual must be able to lock the door to their unit or dwelling, that the individual has a key to the door, and that only appropriate staff have keys.

*Comment:* Several commenters offered support of the requirement that individuals share units only at the individual's choice. One commenter does not believe that sharing units is faithful to the principles of HCBS. We also received comments opposing the requirement or requesting further clarification of the intent of the requirement. Several commenters believe this provision is inappropriate and recommended that the private room/living space requirement be deleted completely. Commenters noted that Medicaid does not cover room and board costs so they believe that the term ''choice'' could be misleading, as the determining factor for choosing double occupancy versus a single-occupancy unit may be whether a resident can afford to. Many individuals are not financially able to afford a private room in settings such as assisted living facilities. One commenter expressed concern that, as proposed, allowing individuals to choose to share units without also requiring states to provide (financially needy) individuals with adequate funding, such as increasing the maintenance needs allowance, will force those individuals into nursing facility settings. One commenter added that ''individual choice'' should be reflective of an individual's resources and care needs. Another commenter believes that since beneficiaries typically pay for room and board out of their SSI benefit the proposed language would effectively exclude assisted living as an option for Medicaid individuals in many states since providers cannot afford to offer private rooms at the rate Medicaid beneficiaries pay. A few commenters added that sharing living units may be necessary to ensure a range of housing options the HCBS waiver program and at the same time manage resources to meet the cost-neutrality standard under the section 1915(c) of the Act waiver program. A few commenters interpreted the regulation to require separate bedrooms for all individuals receiving residential services unless the individual requests otherwise and stated that this requirement will result in a huge unfunded mandate that will double the cost of residential group home care. Commenters suggested the following regulatory changes related to this provision:

- Revise the rule to say ''Individuals in shared rooms will have a choice of roommate.''
- Revise the rule to say ''Individual roommate preferences are accommodated to the maximum extent practical and documented in the individual's person-centered service plan.''
- Revise the rule to add a requirement that individuals should not have to share a unit unless it is with a spouse, partner, or other family member.
- One commenter recommended that sharing a bedroom is clearly documented as the choice of the individual and that the room is shared only with a person of the individual's choosing.
- One commenter suggested that the rule needs to make it clear that a resident's choice acknowledges his economic situation.
- Other commenters noted that if the requirement is finalized, CMS needs to add an exception to the requirement for residential settings that do not meet the private room/living space requirement but are appropriate to meet the waiver client's needs and preferences according to the individual, the client's designated representative and the case manager.
- Revise the rule to say '' Individuals with disabilities receiving HCBS share units with other individuals with disabilities receiving HCBS, whether the unit is a single bedroom or a multi-room living space, only at the choice of the individual with disabilities receiving HCBS, at all times and under all circumstances. Individuals with disabilities receiving HCBS may share such units with a person who is present to provide services to the individual if necessary for safety reasons, if appropriately justified and documented.''

*Response:* We understand the concerns raised by the commenters. We have clarified that we are not requiring that every individual receiving HCBS have their own bedroom when receiving residential services. The rule is requiring that individuals be provided options of residential settings, including an option of a private room. This rule does not require every provider to have a private room option. Instead it requires the State to ensure that there are private room options available within a state's HCBS program. We agree with the commenters that the financial resources available to an individual may impact the options available to a particular individual and we have changed the regulatory text to make that clear. We also agree with the commenters that if an individual chooses to share a room, that individual also must have a choice of their roommate. We have changed the regulatory text to clarify this. We plan to address these issues further through future guidance.

*Comment:* One commenter indicated that in their assisted living facility, all residents have a private room but share a ½ bath with the private room next door and believes that under the proposed regulation a resident in this kind of situation would never find the appropriate bath mate because the rule would require that they have their own ½ bath and the commenter believes this was not CMS' intent.

*Response:* We believe that the arrangement described by the commenter, that one bathroom is shared between two private rooms, will meet the requirement at § 441.530(a)(1)(vi)(B)(*2*) and § 441.710(a)(1)(vi)(B)(*2*) that individuals share units only at the individual's choice.

*Comment:* One commenter recommended that CMS form a work group of stakeholders to determine a method for ensuring that Medicaid waiver applications and renewals demonstrate how the state assisted living program ensures adequate reimbursement for private room occupancy (that is, the state assisted living program does not restrict room and board payments to less than the cost of providing a private room and provides housing assistance as required).

*Response:* States are required to provide opportunities for public input in the development of Medicaid service rate methodologies. During the SPA review process, we ensure that the state has met this requirement and that the state's proposed reimbursement methodologies comport with requirements at section 1902(a) of the Act. These include safeguards against unnecessary utilization of services, assurance that payments are consistent with efficiency, economy, and quality of care, and that payments are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such services are available to the general population in the geographic area.

*Comment:* One commenter suggested that the requirement that individuals have privacy in their sleeping or living unit should not be waived by the provider/state.

*Response:* We agree that an individual's privacy should always be respected. Where any modification of this condition occurs, we have included protections in the rule to ensure the individual's rights are respected.

*Comment:* Several commenters strongly urged CMS to require that a bathroom be in the unit for all settings with a capacity of six or more residents as the commenters believe that having one's own bathroom is a fundamental characteristic of living in one's own home. The commenters noted that CMS proposed a similar requirement last year, and believes that such a requirement is no less important today and added that it would be difficult to consider a setting ''community-based'' if, for example, a building housed 10 or 20 residents who shared a bathroom or bathrooms located off a main hallway, and a resident at 2 a.m. had to walk down the facility hallway in order to use the bathroom. The commenters recommended the following provision be added to the requirements at (B): Units include at least one full bathroom (unless the setting is in a building with a capacity of six or fewer residents).

*Response:* We understand the commenters' concern; however, the standard for how many bathrooms a dwelling must have is governed by building code, and is beyond the scope of this regulation.

*Comment:* One commenter expressed the opinion that the bathroom is the most private part of their home, and inability to control functions performed in that room is a major source of feelings of loss of dignity and personal autonomy among people with disabilities. As such, the commenter believes that privacy in the bathroom should be maximized and assistance should be provided only when actually needed, limited to specific tasks and carried out one-on-one with the bathroom door closed.

*Response:* We agree with the commenter and believe that an individual's privacy should be respected in all activities of an individual's life.

*Comment:* Several commenters expressed strong support and appreciation for the inclusion of this provision and two noted that the inability to decorate or furnish a living unit would be a clear indicator of an institutional model.

*Response:* We appreciate the commenters' support.

*Comment:* A few commenters supported the proposed rule as written.

*Response:* We appreciate the commenter's support.

*Comment:* One commenter supports the regulation, but believes the rule should go further and require living units to have access to food storage and preparation space (with the caveat that stoves or microwaves could be removed if the assessment documented that it would be a danger because of the resident's cognitive impairment).

*Response:* We agree with the commenter and believe that this is reflected in this regulatory language.

*Comment:* Several commenters generally supported the proposal that individuals have the freedom and support to control their schedules and activities, but recommended that the word ''control'' be changed to ''choose'' noting that choice is a foundational element of HCBS and merely allowing individuals to control schedules and activities is inadequate. According to commenters, supporting an individual and providing the support necessary to participate in activities (for example, the transportation to attend a selected activity) allows for full community living.

*Response:* We believe that it is fundamental for individuals to have the control to make their own choices. Therefore, we do not believe it is necessary to change the word control.

*Comment:* While commenters agreed with the principle that a resident should be able to eat, socialize and come and go freely, several commenters expressed concern with the proposed language and suggested that (a)(1)(vi)(C) should not focus on ''access'' but rather on the individual's choice to select the foods they eat, to store food in their rooms, to bring back food from the facility's kitchen and to reschedule meal times. The commenters pointed out that because HCBS facilities most likely schedule meals at specific times, as required by regulation, a resident may not have access to all food in the building all the time, and a residential setting cannot reasonably accommodate each individual's preference on a 24-hour a day basis. One commenter requested clarification as to whether or not the proposed ''access'' requirement would result in a housing arrangement that includes a daily activity (such as meals) at pre-arranged time not being considered a home and community-based setting. A few commenters requested that the final regulation be stronger in its intent to ensure meaningful choice and provide for activities that will support integration with the community. The commenters noted that as written the language could be easily interpreted to maintain institution-like settings instead of true community living. The commenters are concerned about situations in which individual choice is not meaningful, for example, an individual being given access to food by having the choice of a snack bar or a pitcher of water and crackers.

*Response:* We disagree with the commenters' belief that a residential setting cannot reasonably accommodate an individual's preference on a 24-hour a day basis. The opportunity for individuals to select the foods they eat,

store food in their room, eat in their room, and decide when to eat are all ways in which the access to food requirement can be met. Under this provision, giving an individual the choice of a snack bar or a pitcher of water and crackers does not meet the access to food requirement. An individual should not be presented with narrow options, decided by someone else, without input from the individual.

*Comment:* One commenter believes the term ''food'' can be interpreted broadly and could lead participants to believe that there must be 24/7 access to full service dining. The commenter recommended that in order to eliminate the range in interpretation, CMS replace the word ''food'' with ''snacks.''

*Response:* We disagree with the recommended change. We expect that the individual will have access to food. This requirement does not pertain to full dining services or to meal preparation, only access to food.

*Comment:* One commenter cautioned that the freedom and support of access to food at any time needs to be carefully monitored and offered the example that unrestricted access to food may be unrealistic for individuals with eating disorders or brain injury.

*Response:* Modification to this requirement may occur as long as it is done in compliance with § 441.530(a)(1)(vi)(F) and § 441.710 (a)(1)(vi)(F).

*Comment:* One commenter noted that freedom to control schedules and activities with support to do so is a different issue from ''access to food at any time'' and requested if CMS intended the support to be available for food related activities as well?

*Response:* It is unclear what the commenter means by ''food related activities.''

*Comment:* One commenter believes that the requirement that individuals have ''freedom to control schedules and activities with support to do so'' should not be permitted to be changed by the provider/state. The commenter explains that this is a particularly important point because many residential facilities have policies and procedures that say that residents have freedom to choose and participate in preferred activities, but as a matter of actual fact, the facilities do not provide the necessary support to make such freedom a reality. The commenter suggests that this subsection may be an appropriate place to state that ''a person's ability to receive any service from any provider described in his/her person-centered plan will not be infringed upon by any provider for any reason.''

*Response:* We agree that a person's ability to receive services identified in the person-centered service plan should not be infringed upon by any provider for any reason. We believe that preventing an individual from receiving any service identified in the person-centered service plan is a direct violation of the person-centered plan requirements and the home and community based setting requirements specified in this regulation. Additionally, any setting not adhering to the regulatory requirements will not be considered home and community-based. The supports necessary to achieve an individual's goals must be reflected in the person-centered service plan as required under § 441.725(b)(5).

*Comment:* One commenter suggested that, to modify the condition pertaining to individuals having visitors of their choosing at any time, provider documentation should be required for a safety need to restrict access to a person's desired visitors, the names of specific visitors whose access will be controlled, how access will be controlled, along with a description of the specific independently-verifiable threats of real harm that uncontrolled access by those visitors represent to the person. The commenter suggested that the plan should allow visits even by people on this controlled-access list if they can be conducted safely by providing a monitor or other means.

*Response:* We appreciate the commenter's general support. The regulation has been modified at § 441.530(a)(1)(vi)(F) and § 441.710(a)(1)(vi)(F) to specify the requirements that must be met to modify the condition pertaining to individuals having visitors of their choosing at any time.

*Comment:* One commenter expressed concerns that some assisted living settings may have policies about visitation and that as a result they would be automatically eliminated from being considered community-based settings.

*Response:* Settings that do not comply with the requirements of this regulation will not be considered home and community-based settings.

*Comment:* Several commenters supported individuals' rights to have visitors of their choosing at any time; however, the commenters noted that in a provider-based setting this right should be viewed in the context of shared living arrangements. Several commenters noted that the safety of other residents and their ability for quiet enjoyment of their living setting must be considered and suggested that the rule be revised to add language that allows for reasonable rules for safety and the quiet enjoyment of the provider setting.

*Response:* We acknowledge that in certain living situations the preferences of others must also be respected. We expect that there will need to be communication and coordination between all parties affected.

*Comment:* A few commenters voiced concern that allowing some individuals to have any visitors of their choosing at any time in some cases could be a safety issue. Another commenter added that it is not reasonable that residents be allowed to have visitors to the extent that they can ''visit'' for extended and/or indefinite periods of time, noting under the proposed language, these visitors could actually live in the HCB setting.

*Response:* It would be reasonable for there to be limitations on the amount of time a visitor can stay as to avoid occupancy issues. Such limitations should be clearly stated in a lease, residency agreement, or other form of written agreement.

*Comment:* Several commenters supported the proposed language in general but one recommended that CMS add ''including overnight'' to allow for individuals to have visitors of their choosing at any time as this is a right that others have.

*Response:* We believe the language adequately addresses this issue, and allows for flexibility as appropriate.

*Comment:* Several commenters recommended that the proposed requirement on visitors have additional language and protections, which would allow for reasonable limitations on how and where visits are conducted for safety and the quiet enjoyment of the provider setting for all residents. One commenter suggested that the provision be changed to read: ''individuals are able to have visitors of their choosing at any time that is reasonably and mutually agreeable with other members of the household and consistent with their support needs.'' Two commenters recommended adding the phrase ''provided such visitors are not disruptive to individuals in the residential setting'' to the end of the proposed language. One commenter recommended the rule be revised to say ''if the building rules are established and approved by the residents, they are allowable and residents can receive HCBS.'' Another commenter believes CMS should add a provision that the provider can deny access of visitors if there is a reasonable belief that the visitor presents a danger.

*Response:* We believe the regulatory language adequately addresses the visitation requirement. We will take the

commenters' suggestions under consideration as we develop further guidance.

*Comment:* Several commenters strongly supported this provision as proposed and stressed that it is an essential provision. These commenters expressed concern that under current standards, some assisted living settings are not physically accessible and have nonetheless received HCBS waiver funding for setting services. One commenter supported this requirement and added that the modifications and justifications for physical accessibility are included in the service plan.

*Response:* We appreciate the commenters' support.

*Comment:* One commenter believes that the proposed language is too vague and noted that additional guidance is essential, especially given the limited availability of resources to upgrade existing facilities and the varying degrees of accessibility needed depending on the nature of any particular disability. Some commenters noted that settings must be physically accessible under the ADA and Section 504 of the Rehabilitation Act without reference to any specific characteristics of the individual and therefore, indicated that this provision isn't necessary. A commenter indicated that there are no possible legitimate safety reasons for not providing a physically accessible residential or program setting to any person with a disability, and that failure to do so may be a safety hazard. These commenters advised that this condition must not be modifiable for any reason.

*Response:* We agree and revised the regulations so that they do not include § 441.530(a)(1)(vi)(E) and § 441.710(a)(1)(vi)(E) as an additional condition that can be modified.

*Comment:* Two commenters indicated that to ensure the exclusion of segregated settings and promotion of integrated settings, CMS should revise this provision to specify that a provider-owned or controlled residential setting should not only be ''physically accessible,'' in terms of architecture for persons with mobility disabilities, but should also be accessible for persons with sensory disabilities. This includes ensuring effective communication through the provision of auxiliary aids and services, such as but not limited to sign language interpreters, alternative formats, and adapted equipment and devices, such as smoke alarms and telephones.

*Response:* We do not agree with commenter's suggestion to revise the regulatory language. Items and services that are needed by individuals to live in their homes and communities would need to be identified through the person-centered planning process and some of those items and services may be covered through a Medicaid service, such as 1915(i) HCBS, State plan home health or under a 1915(c) HCBS waiver.

*Comment:* One commenter supports the list of excluded settings.

*Response:* We appreciate the commenter's support. The excluded settings included in the regulation are consistent with the settings excluded in statute.

*Comment:* Many commenters noticed the difference between § 441.530(a)(2)(iv) and § 441.656(a)(2)(iv). The commenters wanted to know if the difference exists because the 1915(i) statute refers to ''hospital'' as institutionalized care, whereas 1915(k) does not. To the extent possible, the commenter encouraged CMS to be consistent across authorities if it intends to clarify this difference.

*Response:* Whereas section 1915(k)(1)(A)(ii) of the Act expressly prohibits a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded from being considered home and community based settings, the statute did not include a hospital among the list of excluded settings. In an effort to be consistent with other authorities providing HCBS, we proposed to exclude hospitals providing long-term care services from the definition of a home and community setting for the provision of the Community First Choice Option. We believe that it would be duplicative to provide CFC services, such as assistance with activities of daily living, in such settings. Additionally, we believe this exclusion aligns with section 1915(k)(1)(A)(ii) of the Act requiring that services are provided in a home and community-based setting and section 1915(k)(3)(B) of the Act requiring that services are provided in the most integrated setting appropriate to the individual's needs. However, we understand that individuals will likely have a continued need for certain types of assistance while experiencing a short-term stay in a general acute hospital setting. Under such circumstances, most services provided in a general acute care hospital are not CFC services, but individuals who have an assessed need for assistance with IADLs may continue to receive such services while an inpatient in such a setting.

*Comment:* Many commenters requested this section be revised to exclude ''a hospital'' without the proposed qualification that it must provide long-term care services. One commenter also agreed with the recommended revision and expressed concern about duplication of services. The commenter believes that allowing an individual to receive IADL services during a short-term stay in a general acute hospital would be hard to administer without increased costs to the state. The commenters want the language to be consistent with § 441.656(a)(2)(iv), which excludes any section 1915(i) of the Act service from being provided in a hospital.

*Response:* As with payment for any Medicaid service, we expect states to have processes in place to safeguard against unnecessary utilization of such care and services and prevent the duplication of the payments of Medicaid services. We understand that individuals may have a continued need for assistance with certain IADLs while experiencing a short-term stay in general acute hospital settings. Therefore, while services provided in a general acute care hospital are not CFC services, individuals who have an assessed need for assistance with IADLs may continue to receive such services, as long as those services do not duplicate services provided by the hospital setting while an inpatient in an acute hospital setting.

*Comment:* A few commenters agreed with the regulatory language stating that individuals in an acute care hospital who need assistance with IADLs, should not be prevented from receiving such services while they are in an acute hospital setting. The commenters further stated that the ability to receive these services, as needed, while in the hospital could enable a smoother transition after hospital discharge back to a home or community setting and help prevent institutionalization.

*Response:* We appreciate the commenters' support, and will include this provision into the final regulation.

*Comment:* Several commenters requested the regulation be revised to add ''Board and Care homes'' for people with disabilities to the list of excluded settings, because of the institutional manner in which they operate.

*Response:* We do not believe it is necessary to identify specific settings, beyond what is specified in statute. States define settings differently, and the way board and care operates in one state, may be very different from the way board and care settings operate in another state. Recognizing the lack of national standard-setting definitions, we believe defining the qualities that all settings must exhibit to be considered home and community-based is the best way to apply a national standard. We believe the most effective and consistent

way to assure that individuals receiving Medicaid HCBS, regardless of age or type of disability, are offered HCBS in the most integrated setting appropriate to their needs and preferences, is to focus on the qualities of ''home'' and ''community'' that assure independence and integration from the perspective of the individuals. We will provide additional guidance to states to identify any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

*Comment:* In response to the request in the preamble for comments on whether there are settings in addition to those currently enumerated that are, by their nature, location, or administration inherently non-community based, several commenters suggested § 441.530(a)(2)(v) and § 441.710(a)(2)(v) be revised to say ''Any other locations that have qualities of an institutional setting, as determined by the Secretary. The Secretary will apply a rebuttable presumption that a setting is not a home and community-based setting, and engage in heightened scrutiny, for any setting that is isolated from the larger community, does not allow individuals to choose whether or with whom they share a room, limits individual's freedom of choice on daily living experiences such as meals, visitors, and activities or limits an individual's opportunity to pursue community activities.'' The commenters also stated that if CMS does not make the recommended revision, then the regulations in § 441.530(a)(2)(v) and § 441.710(a)(2)(v) should specify that such characteristics give rise to a rebuttable presumption that the setting is not home and community based.

*Response:* We appreciate the commenters' suggestions, however we believe they are already addressed in § 441.530(a)(1) and § 441.710(a)(1). Therefore we will not revise § 441.530(a)(2)(v) and § 441.710(a)(2)(v) to include the commenters' suggestions as we believe it would be duplicative.

*Comment:* One commenter indicated that it is difficult to imagine how settings located on or adjacent to the grounds of an institution could be considered home and community based. Another commenter further added that the regulation should be revised to add that the settings listed in § 441.530(a)(2)(v) to the list of excluded settings.

*Response:* In response to the many comments we received, we will not amend the regulation to explicitly prohibit settings listed in section § 441.530(a)(2)(v) from the definition of home and community-based. However, such settings are presumed to be institutional. States wishing to identify such settings as home and community-based may, during the SPA and waiver submission and review process, provide evidence as to how such settings are not institutional in nature. We will determine if the setting is not an institution and meets the HCB setting requirements.

*Comment:* One commenter requests CMS reconsider its position with regard to the provision of HCBS on ICFs/MR campuses and planned residential communities for people with developmental disabilities.

*Response:* ICF/IIDs (formally known as ICF/MRs) are statutorily prohibited from being considered home and community-based under the authorities of sections 1915(c), (k) and (i) of the Act and services provided on the campuses of these facilities are presumed to not have the qualities of HCBS under this rule and subject to the heightened scrutiny provision of this rule.

*Comment:* A few commenters requested the rule clarify that the exclusion is intended for residential supports and not supported employment or other vocational activity that may find an individual choosing competitive employment in a setting that may be located in a building on the grounds of, or immediately adjacent to a public institution or disability-specific housing complex.

Conversely, another commenter expressed concern that people with disabilities are being served in segregated work and day settings that do not meet the ''most integrated setting'' definition and do not comply with guidance related to the ADA and the *Olmstead* decision issued by the US Department of Justice (DOJ). Additionally, the commenter indicated that DOJ has made it clear that the ADA's integration mandate includes day and employment services, and that unwarranted placement in segregated day programs is a violation of this mandate. Thus, this commenter recommends that CMS consider excluding segregated, congregate facilities and programs from the definition of HCBS. The commenter also recommends specifying the following settings are excluded (per DOJ guidance): (1) Congregate day and employment services populated exclusively or primarily with individuals with disabilities, (2) Congregate day and employment services settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) Day and employment services settings that provide for daytime activities primarily with other individuals with disabilities. The commenter recognizes that if these recommendations are adopted, a transition period is necessary to ensure sufficient time for services to meet these new requirements.

*Response:* CMS does not have the general authority to enforce the ADA independently of its oversight of the Medicaid program. To the extent that the services described are provided under 1915(i) or 1915(k) (for example, residential, day, or other), they must be delivered in settings that meet the HCB setting requirements as set forth in this rule. We will provide further guidance regarding applying the regulations to non-residential HCBS settings. In addition, since this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals receiving 1915(i) State plan HCBS or 1915(k) CFC services must be living in settings that comport with the HCB setting requirements as set forth in this rule regardless of whether they are receiving HCBS in that residence. This is consistent with CMS' longstanding policy regarding 1915(c) HCBS.

*Comment:* One commenter recommends establishing a maximum limit to the number of individuals living in a provider-owned or controlled residential setting.

*Response:* We do not believe there is a maximum number beneath which we could determine with certainty that the setting would meet the requirements of HCB settings. The focus should be on the experience of the individual in the setting. In addition, we respect a state's right to establish state laws to implement such a requirement regarding size. We intend to provide additional guidance to states to identify any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. We plan to include in the guidance examples of specific settings that will require heightened scrutiny and may identify additional qualities, including the size of the facility, triggering such scrutiny. Our experience through our work with other federal Departments and current research indicates that size can play an important role in whether a setting has institutional qualities and may not be home and community-based.

*Comment:* One commenter added that an approach focused on characteristics,

rather than locations, provides a useful framework to define home and community-based settings, while allowing consumers of long-term services and supports choices regarding the services and supports they receive and from whom they receive them, rather than limiting the person's choices arbitrarily. However, several other commenters expressed opposition to this language and requested that it be removed completely. These commenters stated that, if a provider-based setting can meet all of the criteria in paragraph (1), it should not matter where the provider is located, and applying a rebuttable presumption is redundant. They also stated that the focus should be on the autonomy of the individuals receiving services. One from this group of commenters stated that the ''rebuttable presumption'' could create a standard that is difficult to meet and imposes obstacles that are unnecessary and unreasonable. This commenter also stated that each setting regardless of physical location should be evaluated in accordance with the same quality review criteria and that the rebuttable presumption is not good public policy and has the potential to be prejudicial. Another commenter stated that the focus should not be on the setting, but rather on an individual's choices and the person-centered service plan, and does not believe arbitrary geographic or location-specific criteria are appropriate. One expressed that this requirement will hinder current initiatives to rebalance state's long term care systems. Another expressed concern with the effect this language would have on settings financed by the Department of Housing and Urban Development (HUD) with millions of dollars to develop group homes, apartment complexes and other housing for individuals with developmental disabilities. Another stated that some individuals make the choice to live in disability-specific housing with proximity to friends that rent from the same provider, or that they choose housing in a convenient location with access to services such as transportation.

*Response:* We appreciate the comments provided about the challenges of the term rebuttable presumption. The proposed language provided a list of settings that, from our experience in approving and monitoring HCB programs, typically exhibit qualities of an institutional setting. However, we recognize that state innovations, creative and proactive efforts to promote community integration, and market changes could result in the settings being located in a building that also provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to a public institution, that in some instances could be considered home and community-based. In response to public comments, we have revised the regulatory language to say ''Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.'' We believe the revised language more clearly reflects the intent of this provision.

*Comment:* One commenter expressed concern with the ultimate discretion granted the Secretary through this regulation; the commenter categorizes it as ''authority with strings attached.'' The presumption, coupled with the requirement of heightened scrutiny for certain proposals, makes it very difficult for the Secretary to find in favor of innovative partnerships that provide immediate and consistent access to necessary health care, peer relationships, and legitimate ''integration,'' including HCBS homes located on ICF/MR campuses and planned residential communities.

*Response:* We do not agree with the commenter. We believe the requirements set forth in this regulation will support innovative partnerships that support community integration and provide individuals with maximum control.

*Comment:* One commenter recommended the rule apply a presumption of ''community-based'' if an individual has lived in an assisted living facility for at least 12 months and is the only available alternative to the institutional settings.

*Response:* We do not believe that the amount of time spent in a setting should be used to classify the setting as home and community-based.

*Comment:* Several commenters stated that while the concept of a rebuttable presumption may be attractive in the abstract, the commenters doubt that it can be operationalized effectively. The commenters expressed concern that this will be done as an individualized determination falling under ''we-know-it-when-when-we-see-it.'' The commenters stated that providers need clear guidance ahead of time, before the individual moves in and/or before the provider develops property. A couple of commenters expressed concern about the lack of guidance regarding rebuttable presumption and what would constitute adequate rebuttal of the presumption. One stated that the proposed rule already creates a set of requirements specific to provider-owned and controlled residential settings receiving HCBS funding, which effectively create heightened scrutiny for such settings. The commenter also questioned what procedural safeguards will be in place to allow appeals of decisions, who will make the final determinations, what are the additional administrative burdens placed on states and providers to add this additional layer of heightened scrutiny, and if a setting meets an individual's needs and preferences and meets the other criteria for home and community-based settings, who should bear the burden of proof to demonstrate that a setting is not home and community-based. Some commenters believe that the settings to which the rebuttable presumption will apply should be explicitly excluded rather than subjected to ''heightened scrutiny.''

*Response:* The regulation has been revised to make it clear that states wishing to present evidence that such settings are home and community-based may do so. Under such circumstances, we will engage in heightened scrutiny in the course of the review of a SPA and/or the state's transition plan of supporting documentation of this evidence to make a determination that the settings do comply with the requirements set forth in § 441.530 and § 441.710. This review will also include assessment of how the settings allow for full integration into the broader community. In addition to information provided from the state, we also will accept information from stakeholders and other third parties regarding whether such settings have the qualities of being home and community-based and do not have the qualities of an institution. We stress, however, that lacking strong evidence to the contrary, we will presume the settings are not HCB.

*Comment:* One commenter indicated disagreement with the application of a rebuttable presumption. Specifically, the commenter does not agree with

housing arrangements that encourage spouses and family members to tie their own housing to the institutional housing of the family member who requires the most care, rather than encouraging the development of innovative solutions for how individuals with various chronic and high care needs may be housed in the most integrated settings. The commenter also indicated that while it is tempting to cleanly differentiate between the needs and wishes of senior constituents and the disability community regarding this regulation, it does not take into account the increasing numbers of people with disabilities who are aging, who must be assured that they will not have any weaker protections around gaining access to services and supports in a truly integrated community setting.

*Response:* We appreciate the commenter's opinion. We believe our HCB setting requirements are beneficial to everyone regardless of age, condition or level of disability.

*Comment:* Several commenters suggest that rather than creating a rebuttable presumption, CMS should state that the settings listed in § 441.530(a)(2)(v) and § 441.710(a)(2)(v) are not home and community-based even if these settings meet the requirements in paragraph § 441.530(a)(1) and § 441.710(a)(1). The commenters urged that one of the most important qualities of a home and community-based setting is its location; a setting that is literally on the grounds of, in, or synonymous with an institution cannot be home and community-based.

*Response:* We appreciate the commenter's perspective. Such settings are presumed to be institutional and not home and community-based. However, we recognize that it could be possible for some of these settings to operate in a manner that is consistent with the HCB requirements set forth in this rule. Therefore, we will engage in a formal review of such settings if the state would like to recognize them as home and community-based settings under the applicable Medicaid authorities.

*Comment:* One commenter suggests that if we retain the heightened scrutiny of settings described in this section, then we should modify the regulation to include an exception from the requirement if the client, the client's designated representative and client's case manager believe it is in the client's best interest to be allowed to live in such a setting.

*Response:* We believe that individuals must have the opportunity to receive services under 1915(i) in settings that support integration with the greater community. Therefore, State plan HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule and since this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals must be living in settings that comport with the HCB setting requirements as set forth in this rule. For settings that do not meet these requirements, we note that there may be other Medicaid authorities under which such services may be covered.

*Comment:* One commenter expressed concern that the presumptive ineligibility of certain congregate settings and disability specific housing may have a chilling effect on the development of innovative service delivery approaches designed to meet the preferences of and provide a wider array of options to people with limited income and resources. For example, the commenter notes that continuing care retirement communities (CCRCs) and dementia-specific assisted living have been important options for older persons who want to plan for a future in which increased disability is likely. But most of such settings and services are very expensive—well out of the reach of people who are likely to need Medicaid assistance. In response, some innovative providers of subsidized housing are co-locating assisted living settings on the same location or converting parts of their buildings to assisted living. If such approaches would mean that these settings were presumptively ineligible to participate in Medicaid HCBS programs, it could have a chilling effect on developing such innovations—effectively restricting them to those consumers who have substantial resources. One potential solution would be to recognize what the Fair Housing Amendments Act of 1988 has recognized in civil rights law—namely that ''housing for older persons'' is desired by a substantial number of people age 55 and older and that it is not considered discriminatory. It is relevant to recall that assisted living and CCRCs emerged largely as private pay options, reflecting strong consumer demand for age-specific housing with services that enable older people to live more independently than they would in a nursing home. This history stands in contrast to state mental hospitals or institutions for those with intellectual or developmental disabilities, where state policies created segregated environments for people with such disabilities. The history of age-specific housing with service approaches also contrasts with the history of nursing homes, which grew dramatically after the enactment of Medicaid with its institutional funding bias. In correcting the history of state and federal actions that have segregated people with disabilities, CMS should not prevent the ability of older persons with low incomes to access innovative approaches to housing and services that have demonstrated strong consumer demand and are permissible under civil rights law.

*Response:* It is not our intent to hinder innovative ideas for future development of HCBS. Rather, we believe that the requirements set forth in this regulation are a result of many comments we received from stakeholders, including individuals receiving services. Thus, we believe that developers and states should use this as a foundation as they look at developing plans to provide long-term care services and supports in their communities. We believe that this could be a tool to assist states with adhering to the *Olmstead* mandate and the requirements of ADA.

*Comment:* The commenters also requested that CMS clarify that it did not intend to include such group homes located in and fully integrated into typical neighborhoods or small community ICF/MR homes in the definition of a ''facility that provides inpatient institutional treatment.''

*Response:* It is possible that the setting described by the commenter could be considered a home and community-based setting, if it meets the requirements set forth at § 441.530 and § 441.710. ICF/IIDs regardless of size are statutorily prohibited from being considered a home and community-based setting, because they are institutions under the statute.

*Comment:* Several commenters indicated that a setting should not be disqualified based solely on physical proximity to an institution. One commenter expressed concern this provision could force people into nursing homes as the only financially viable option. Providers have been encouraged to diversify and move into HCBS, including converting portions of what would be considered ''institutional'' settings to assisted living or other type of residential setting. Similarly, some commenters believe that if a converted nursing home space meets the requirements of § 441.530(a) and § 441.710(a) then there should not apply a rebuttable presumption that the setting is not a home and community-based setting.

*Response:* We appreciate the commenters' concerns. It is not our intent to have individuals move into long term care facilities, when their

needs could be met safely and adequately in a less restrictive environment. Our experience has shown that settings in close proximity to institutional settings, whether on the same campus, in the same building, sharing the same staff, and perhaps sharing some common areas are more likely to be operated in a manner similar to the institution. They are often also similarly segregated from the larger community of individuals not receiving Medicaid HCBS. Therefore, we strongly believe in applying a presumption that such settings are institutional in nature. However, we recognize that not all settings co-located, or closely located with an institutional setting, exhibit the same institutional characteristics. Therefore, through the applicable state plan amendment process, states will have the opportunity to describe how such settings meet the HCB setting requirements set forth in this final rule and do not have the qualities of an institutional setting.

*Comment:* One commenter indicates that there is a strong incentive for states, local government authorities, and providers to work together to use existing segregated institutional locations. The incentive falls toward keeping these properties fully utilized. These incentives will not be easily overcome, and may well require an outright prohibition on providing public funding to settings that share the buildings or grounds of an institution that provides in-patient care. A few commenters expressed concern with the effect this rule will have on the commenter's state plan to rebalance its long term care system. The state is currently seeking to ''right size'' the nursing home bed supply. The driving force behind this initiative is to rebalance the long term care system and provide an optimal level of choice for the consumer. It would only be natural for long-term care providers to participate in this right size initiative by utilizing the state's successful model of affordable assisted living to create campus settings that would provide a full continuum of long term care services. Many nursing home providers possess land and existing structures that could be used to develop managed residential communities, individual homes or cottages, or other independent living options where assisted living or home care services could be delivered in accordance with an individualized person-centered plan.

*Response:* We recognize that repurposing existing building structures is a tool used to control costs. However, we believe that such structures should not be a state's first option when looking to increase the pool of community-based residential settings. Such structures were often built and operated in such a way that they inherently hinder individuals from participating in the broader community, and reduce individuals' control of how and where they receive services. However, there may be circumstances where such a setting could be repurposed in a way that it would meet the requirements for HCB settings and would no longer have the characteristics of an institution. The final rule allows a state to submit evidence for CMS' consideration in this circumstance.

*Comment:* Many commenters requested § 441.530(a)(2)(v) and § 441.710(a)(2)(v) be modified to also include settings on the grounds of or adjacent to a privately operated institution. These commenters noted that a private institution is no less institutional than a public one and should be treated the same for purposes of this provision.

*Response:* We appreciate the commenters' concern. It is expected that all settings, public and private, meet the HCB setting requirements of this regulation. We specifically make reference to a setting that is adjacent to a public institution in the regulation language due to public input. However, while we did not incorporate this suggestion into the regulation, we note that heightened scrutiny will be applied to any setting that hinders or discourages integration with the broader community.

*Comment:* One commenter agreed that it is important to have rules that circumvent practices such as building many group homes or apartments on the grounds of institutions or on the property where an institution once stood. However, the commenter believes the requirements proposed go too far, as the standards would preclude people from choosing to live in many neighborhoods that might be in proximity to an institution, such as the VA hospital where they worked, even if they live in proximity to other aspects of community living as well.

*Response:* The presumption will be applied to settings that discourage integration of individuals from the broader community. We will describe these settings in future guidance and will take into account the commenter's concerns about group homes on the grounds of an institution that are recently closed. Regarding the concerns about settings adjacent to VA hospitals, a residential setting that allows individuals to have full access to community services, and allows for active participation in neighborhood/community events, resources and integrated activities, but is located in close proximity to a VA hospital might meet the qualities for a home and community-based setting and not the qualities of an institution.

*Comment:* A few commenters indicated that older persons often seek out settings in which they can stay as they grow older and develop service needs. A significant number of older persons prefer to live in a senior community or similar setting that includes a nursing facility, particularly when one spouse or partner needs nursing facility care and the other does not. The commenter recommends that being on the grounds of, or adjacent to an institution not be a disqualifying characteristic.

*Response:* We will engage in discussion with any state who proposes that such settings would meet the qualities for home and community-based and not the qualities for an institution.

*Comment:* One commenter indicated that the Fair Housing Act contains an exception that allows distinctions based on age, and believes this rule should do so also.

*Response:* The purpose of this section of the regulation is to define qualities for home and community-based settings. Since Medicaid services are available to individuals of all ages, we do not believe it is appropriate to create age-based distinctions.

*Comment:* One commenter believes that hospital-based providers should not be allowable HCBS providers. The commenter also believes that there should be two types of HCBS allowed for a non-hospital entity to offer, even if they are provided on the grounds of a hospital: (1) Services provided by an HCBS provider in the emergency room before the patient is admitted to the hospital, and (2) Discharge planning with a patient in a hospital or long term care setting in order to help facilitate a more rapid, seamless, and coordinated transition into community-based care.

*Response:* We recognize that while an individual is moving through a state's overall service delivery system, there may be certain circumstances in which services provided under various authorities may overlap. Services should be provided as appropriate to meet an individual's needs; however, it is incumbent upon the state to ensure that there is no duplication of payment for the same services. A provider of HCBS could provide services in the emergency room, as long as those services are necessary and do not duplicate the services being provided by the emergency room.

We believe it would be a best practice for there to be communication between those settings and the program that will assist the individual in the community. However, such communication should not supplant the discharge planning activities that hospitals and long-term care settings are required to perform for any individual leaving its setting.

*Comment:* A few commenters requested the regulation define public institution. One commenter requested clarification on the definition of a public institution. Specifically the commenter wanted to know if ''public institution'' means an ICF/MR, or whether it also includes a university, library or community care hospital. Another commenter wanted to know if this provision presumptively excludes HCBS in publicly funded housing for older persons if a nursing home happens to be located on the same campus.

*Response:* The term public institution is already defined in Medicaid regulations for purposes of determining the availability of Federal Financial Participation (FFP). Section 435.1010, specifies that the term public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. Medical institutions, intermediate care facilities, child care institutions and publicly operated community residences are not included in the definition, nor does the term apply to universities, public libraries or other similar settings. We will apply this existing definition in implementing the provisions of this final rule. However, we note that any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny that it has the qualities of home and community-based settings. Thus, settings that are located on the grounds of, or adjacent to, institutions that are not defined as public institutions under the existing regulation will still be subject to heightened scrutiny if such settings have the effect of isolating or segregating those receiving HCBS from the broader community.

*Comment:* One commenter expressed concern about the effect this regulation will have on individuals living in continuing care retirement communities (CCRC's). Another commenter believes that co-location on a campus facilitates efficiency, reduces administrative and food service costs, and potentially increases the quality of services provided in the nursing home since the independent living residents often visit their friends who reside in the CCRC's nursing home. The commenter added that co-location facilitates seamless transition among the various levels of care on campus. One commenter expressed concern that the regulation would have a particularly negative impact on not-for-profit long term care providers that more often provide services in a multi-level campus setting because of their missions to meet the multiple needs of the community.

*Response:* In general, CCRC's are a combination of residential settings and care options that include independent living, assisted living, and nursing home care. It is possible that currently the state considers the independent living units to be home and community-based. Nursing facilities are statutorily prohibited from being considered home and community-based and is considered an institutional setting. The independent living units and assisted living units would be presumed institutional and receive heightened scrutiny if they are (1) located in the same building as the nursing home or other facility providing inpatient treatment; or (2) if they are located on the grounds of, or immediately adjacent to, a public institution.

*Comment:* One commenter believes that excluding assisted living facilities that are on the same grounds of an institutional facility may be limiting the choices available to individuals. The commenter believes that offering a variety of locations for community based services better addresses the diverse population that receives these services.

*Response:* Assisted living facilities are not excluded from being considered home and community-based if they are structured and operate in a manner that adheres to the requirements set forth in this rule.

*Comment:* One commenter requested that CMS clarify what is ''inpatient institutional treatment'' and asked whether ''provides'' means direct provision of services by the facility, any provision of services in the facility, or facilitating the provision of such services.

*Response:* Inpatient institutional treatment means that services are provided 24 hours/7 days a week. Therefore, to avoid confusion, we have retained the language ''inpatient institutional treatment.''

*Comment:* Many commenters believe the proposed regulations would eliminate or severely restrict the provision of HCBS in programs located adjacent to a public institution even though the program is also adjacent to other buildings such as local community colleges and universities, stores and businesses, and residential communities. Other commenters indicated that proximity to an institutional setting should not alone be the basis to disqualify a setting as HCB and stated that many seniors choose to live in a community that offers a range of settings.

*Response:* We believe that if the setting meets the requirements set forth in § 441.530(a)(1) and § 441.710(a)(1), is not described as prohibited under § 441.530(a)(2) and § 441.710(a)(2), and does not exhibit qualities of an institutional setting, then the services could be provided in settings like those to which the commenters refer.

*Comment:* A few commenters expressed concern that the language in the proposed regulation could be construed to prohibit the use of HCBS to fund appropriate services on a campus that provides a variety of day habilitation services and employment opportunities for individuals with intellectual and related disabilities. For the commenters this would be an unacceptable and radical policy change from the perspective of these individuals and families who have relied on these services for years. The commenters believe the location allows individuals to be part of the community. The program is located adjacent to a residential neighborhood and shares a parking lot with a college. The commenters are concerned that if these longstanding programs are no longer permissible for these individuals, their alternative would be institutional placement. The commenters request the language ''adjacent to'' not be included in the final regulation or that the interpretative language accompanying the publication of the final regulation explicitly clarify that the circumstances described above do not make this type of program ineligible for HCBS funding.

*Response:* 1915(i) State plan HCBS and 1915(k) CFC services (for example, residential, day or other) must be delivered in a setting that meets the HCB setting requirements as set forth in this rule. We will provide further guidance regarding applying the regulations to non-residential HCBS settings. In addition, since this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals receiving 1915(i) State plan HCBS or 1915(k) CFC services must be living in settings that comport with the HCB setting requirements as set forth in this rule regardless of whether they are

receiving HCBS in that residence. This is consistent with CMS' longstanding policy regarding 1915(c) HCBS.

*Comment:* We received many comments both in support of and opposition to the requirement that would have resulted in heightened scrutiny over a disability-specific housing complex. The comments we received on this provision are reflected as follows:

Several commenters recommend the regulation be revised to remove ''disability specific housing complex'' as a setting in which HCBS may not be provided. The commenters believe that people with disabilities should be able to choose to live in disability specific housing if the housing addresses their needs. One commenter stated that being a disability focused apartment building does not warrant the need for extra scrutiny. There are significant differences between an institution and a housing development.

Many commenters requested the rule clarify that the reference to a ''disability-specific housing complex'' was intended to refer to settings located in a disability-specific housing complex—as well as on the grounds of, or immediately adjacent to, such a complex.

Many commenters expressed concern that the proposed regulations would eliminate or severely restrict HCB services to residents with disabilities in supported living arrangements authorized under and meeting the requirements of HUD Section 811 and Section 202 multi-family housing units, because the homes built under HUD Section 811 or 202 are specifically restricted to people with specific disabilities. They believe the proposed rule appears to conflict with HUD policies.

Several commenters believe that regulatory language will result in the elimination of longstanding services that meet the needs of a large number of individuals. The commenters recommended that CMS issue interpretive guidance accompanying the final regulation to explain that a program located in a building on the premises of a disability-specific housing complex may receive HCBS if the housing complex is in compliance with the underlying laws and implementing regulations, including Section 811 of the National Affordable Housing Act of 1990, as amended and implementing regulations (supported housing for persons with disabilities), the Fair Housing Act, and the ADA.

Many commenters expressed concern that the use of the term disability specific complex would eliminate or severely restrict the provision of HCBS in group homes set around a courtyard where individuals with disabilities have many needed services and supports built into their day-to-day living and have transportation and other assistance to access the general community.

Many commenters requested the regulation provide a definition of the term ''disability-specific housing complex.'' Many commenters believe that undefined, the term is unclear, and too broad.

Several commenters requested we clarify that ''CMS did not intend to include group homes located in and fully integrated into typical neighborhoods within the meaning of ''disability-specific housing complex.''

A few commenters requested the rule clarify whether the presumption that a disability-specific complex is not a home and community based setting applies only if the setting does not meet the other criteria established in the regulation.

One commenter believes the potential elimination of disability-specific housing complexes as home and community-based settings will compromise viable housing alternatives in a housing market that is already in crisis, devastate the ability of providers to deliver services in settings that promote health and safety, and force individuals with developmental disabilities to move from their homes or lose their services and supports.

One commenter expressed opposition to the heightened scrutiny level of review, as proposed in the regulation. According to the commenter, families believe their loved ones benefit from these settings. Some planned residential communities are much like retirement communities where amenities such as bowling alleys, theatre, community centers, restaurants and shopping are readily available, along with necessary health care, support staff, vocational training. The commenter further stated that while the rule seems to embrace certain principles of community, such as individual choice and person-centered planning, there remains a bias that characterizes any sort of program-wide structure and safety measures as too ''institutional'' without any regard to the input of individuals, their families and their legal guardians. This commenter also stated that given that there is already a Medicaid definition of institution, it is improper for CMS to be proposing an expansion of current Medicaid law redefining the term. Another commenter believes that the proposed rule that considers a ''disability-specific housing complex'' an ''institution'' could be confusing and a barrier to effective community housing options for those with intellectual disabilities.

Many commenters objected to the inclusion of disability specific housing as institutional in that many people choose, as a function of age, to live with others with similar needs. The commenters indicated that senior housing, assisted living, and other such options are freely chosen by seniors without disabilities and inquired why people with disabilities who are eligible for HCBS be denied the same array of options available to their peers without disabilities. The commenter noted that the key is that the person-centered plan should provide for individuals making free choices in where they live as long as they do not include nursing facilities, institutions for mental diseases, intermediate care facilities for mentally retarded, hospitals, or other locations that have the qualities of an institutional setting as determined by the Secretary. Other commenters suggested that seniors often choose to live together in a variety of settings and request that CMS respect this preference by establishing exemptions from the proposed setting requirements for continuing care campuses, assisted living settings, and other housing for older persons. The commenter stated that CMS should not preclude successful options for people with disabilities simply based on location or proximity. Alternatively, one commenter indicated that he does not have the same philosophy and asserted that this provision must remain in these regulations. This opinion is based on the commenter's experience with the deinstitutionalization of people with intellectual and developmental disabilities and the commenter's knowledge of recent efforts in certain states to try and use waivers to fund settings that do not promote full inclusion in community life. If CMS does decide to create an exception, the commenter urges we keep it very narrowly tailored to senior communities only, so that it cannot be used to limit the opportunities of people with intellectual and developmental disabilities to experience true integration.

A few commenters requested the regulation clarify if housing or units within general housing, designated for persons with dementia or other cognitive impairments would meet the definition of disability-specific housing complexes. Other commenters added that it is discriminatory to deny HCBS waivers to individuals residing in an Assisted Living Facility providing care specifically to those with Alzheimer's

and dementia just because of where they live.

*Response:* As a result of comments we received on the use of the term disability specific-complex, we have revised the rule to remove the term ''disability-specific housing complex'' and replace it with the following language: ''any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS…'' We note that we are not redefining the term ''institution'' but rather defining what characteristics we will see as institutional and not HCB in nature. We plan to issue future guidance to provide examples of the types of settings that will be subject to heightened scrutiny.

*Comment:* One commenter shared the opinion that disability-specific housing complexes are established for the convenience of service providers, or because the developer believes that people with disabilities should be segregated, or both. The commenter further explains that disability-specific housing complexes are not integrated at all, and therefore certainly not the most integrated setting appropriate to anyone's needs. The commenter recommends that they must not be included as home and community based settings.

*Response:* We appreciate the commenter's perspective. We do not believe that all settings should be excluded; however, we do believe a close review of such settings may be necessary.

*Comment:* Many commenters indicated that if the rule is finalized with application of a rebuttable presumption then it should only apply to disability-specific housing complexes. The commenters recommended that CMS should specify that the presumption may be rebutted only when (1) the setting meets all of the requirements for home and community-based settings in § 441.530(a)(1) and § 441.656(a)(1), and (2) the setting was selected by the individual following a meaningful opportunity to choose from among alternatives, including the most integrated setting for the individual as documented in the person-centered service plan.

*Response:* We do not agree with the commenter's recommendations. Section 441.530(a)(2)(v) and § 441.710(a)(2)(v) have been revised to better articulate the settings that are presumed institutional in nature and will receive heightened scrutiny to determine if they can be considered home and community-based settings.

*Comment:* One commenter believes the rebuttable presumption language also applies to settings where there are specialized services for individuals with similar diagnoses. Many of these programs were designed, developed and chosen by consumers to reflect new standards of care and treatment. The commenter urges CMS to change the language in the rule to reflect this model of care and not limit these programs to only non-Medicaid persons.

*Response:* We recognize that there are many forms of settings and service delivery models serving individuals with a need for long term care services and supports. Due to this variability across the country, we do not believe it would be best to carve out certain models in this rule.

*Comment:* Many commenters were concerned about the effect the proposed rules would have on settings specifically designed for individuals with autism. The commenters stated that many of these individuals failed to thrive in both institutional and totally independent settings, but they do thrive in certain non-urban community based models. The commenters believe the proposed rule ignores the community based nature of these models and inaccurately and unreasonably categorizes these settings as institutions. One commenter believes the proposed regulations will cause downsizing and elimination of public and private specialized residential facilities for persons with severe and profound cognitive-developmental disabilities

*Response:* We believe that settings that are designed to prevent an individual from having the opportunity to participate in the broader community are not home and community-based. We believe that individuals, regardless of service need, can benefit from having the opportunity to participate in the broader community. The goal of this regulation is not to take services from individuals, or make individuals move from a location where they have always lived, but to describe the qualities of settings in which services intended to provide an alternative to institutional care may be delivered. The goal of this regulation is to widen the door of opportunity for individuals receiving Medicaid HCBS to support the same choices to participate in community activities as are available to individuals not receiving Medicaid HCBS; to have a choice in how, when, and where they receive services; and to remove unnecessary barriers and controls. We believe that the Medicaid program provides many options for states to develop delivery systems that meet the needs of individuals regardless of where they fall on the continuum of care.

*Comment:* A few commenters expressed the belief that individuals with severe cognitive impairments should be allowed to live together, because the commenters believe that this is not a population that can benefit by integration within the community at large. The commenter stated that special programming and physical plan improvements for this population have contributed to increased quality of life and quality of care for this population. The commenters request the rule be amended to allow individuals with cognitive impairments to live together and that this not be considered disability-related segregation.

*Response:* We disagree with the commenter in part. We agree that individuals benefit from services that are specialized and tailored to meet their specific needs. However, we firmly believe that all individuals regardless of type or degree of disability would benefit from opportunities for community integration if it is their choice to live in the community and not an institution. We note that Medicaid continues to provide other service options that can support individuals who choose to receive services in non-HCB settings.

*Comment:* One commenter believes the proposed changes to the rules would prevent an individual from making a choice to live in a rural agricultural community setting with several homes on the property. The commenter requested the rules be revised so that every person with every type of disability is given a choice that would meet the individual needs and unique characteristics of the person.

*Response:* Under the requirements of this regulation, for a setting to be home and community-based, it may not discourage an individual's integration with the broader community. The determination would not be based on whether the setting was in a rural, urban, or suburban community, but on whether it has the qualities of home and community-based settings as specified in this rule.

*Comment:* One commenter indicated that in their state, there is the option for individuals to choose fully accessible individual apartments and accessible complexes that are disability-specific housing settings located in community neighborhoods that provide quick response and 24-hour onsite coverage. The commenter stated that the number of these settings has grown and consistently includes waiting lists, and to eliminate these settings for Medicaid

HCBS recipients unfairly limits their choice.

Other commenters expressed concern that many seniors living in age-specific communities will inadvertently be prohibited from receiving HCBS due to proximity to a hospital or nursing facility. The rule, they believe, will lead to more nursing home admissions among seniors and limit choices available to them to receive services in an assisted living facility (ALF). The commenters also stated the proposed language would likely reduce the number of individuals in nursing homes who are able to transition to a more integrated setting, because many individuals transition to ALFs. It should be considered desirable that those served by Medicaid would have the same array of choices as those not on Medicaid.

*Response:* We have removed the references to disability-specific housing in the text of the final regulation. However, if the settings have the effect of isolating individuals receiving Medicaid HCBS from the broader community, we will apply heightened scrutiny to these settings to determine if they meet the required qualities for a home and community-based setting as set forth in this rule. The State could present information to CMS to demonstrate that the settings have the qualities of community-based settings.

*Comment:* Several commenters supported the language as written, stating appreciation that CMS has clarified that the term ''community'' refers to the greater community and not solely a community of one's peers and, that integration also means more than integration in a community of peers. They further stated that focusing on the purpose of HCBS helps define its characteristics. A few commenters agreed that a home and community setting should facilitate individuals' full access to the greater community as they choose, including in the areas noted. However, the commenters noted that individuals may vary in their choices as they seek full access to and participation in the greater community, and a home and community-based setting should facilitate such full access consistent with an individual's choices and preferences. The commenters recommended adding the following language related to access ''based on the individual's needs and preferences.'' Another commenter stated the belief that the language is very broad and ambiguous and should be defined along with ''the greater community.'' Another commenter requested that we define ''community'' and suggested the language parallel the language used under the section pertaining to person-centered service plan, stressing that individuals should be given the right to obtain services ''from the provider and the community of his or her choice.''

*Response:* We support individual choice and agree that individuals may vary in their choices as they seek full access and participation in the greater community. However, in order to receive approval of a State plan under which it will receive Medicaid funding for HCBS, a state must ensure that the choices available to individuals meet the requirements for community integration at § 441.710 of the final rule.

*Comment:* Some commenters expressed concern with the requirement as proposed at § 441.530(a)(1)(i) that the setting must permit access to the greater community ''in the same manner as individuals without disabilities.'' One commenter stated that it would be more appropriate to require access ''to the same extent'' and that this language will give HCBS providers reasonable flexibility in regards to making accommodations for disabilities and to avoid disputes and possible litigation on the exact manner in which such accommodation must be provided. Other commenters indicated that this requirement is not measurable and may reduce choice for rural populations.

*Response:* After significant consideration, we have removed from § 441.530(a)(1)(i) ''in the same manner as'' from this requirement, and replaced it with ''to the same degree of access as,'' to best describe our intent to ensure access to the greater community that includes individuals with and without disabilities.

*Comment:* One commenter stated that licensed facilities may be located in both urban and rural settings resulting in variation with the amount of ''integration'' available. The settings are chosen with this in mind, and one that seems to be less integrated to CMS may be preferred by some over living where it appears participation in community activities is greater.

*Response:* We agree that there is a large degree of variance regarding the geographical settings where licensed homes are located. We agree that an individual should be able to exercise choice in regard to these settings. We do not express preference in regard to the proximity of activities to where an individual lives; the emphasis is on access to those chosen activities and whether the individual has the same degree of access to such activities as individuals not receiving Medicaid HCBS.

*Comment:* One commenter believes that CMS should not disqualify any setting from receiving federal financial participation (FFP) solely based on the fact that it is a congregate setting.

*Response:* It is not our intention to exclude a state from receiving FFP for a setting solely based on the fact that it is a congregate setting. Our intention is to specify qualities necessary for a setting to be considered a HCB setting. Congregate settings may be included if they meet the HCB setting requirements set forth in this rule.

*Comment:* Several commenters stated that a service provider (for example, a job coach), not a setting, facilitates employment-seeking opportunities. Similarly, a service provider, not a setting, assists individuals in managing what few disposable resources are available to them. One commenter seeks clarification regarding what facilitating ''full access to . . . employment opportunities'' entails and what possibilities, if any, would be imposed on the housing provider. One commenter supports the concept of community integration, but believes CMS has blurred the distinction between the setting and the service provider. One commenter believes that CMS is wrong to assume that location will enforce the goals of integration, for example, social interaction, productivity and competitive employment. The commenter further notes that having the ability to access the general community is very different from being forced to live in a community ''setting'' that is not only unwilling, but unable to provide resources for safety, supports, interaction, social integration and employment in competitive settings. One commenter encourages CMS to ensure that the settings in which residents receive services are designed to facilitate the actual integration of the recipients into the surrounding community.

*Response:* We agree that it is the responsibility of the service provider rendering the services and therefore we have added language under person-centered service plan requirements to ensure a clear understanding of our expectation. We believe the section on person-centered planning clarifies CMS' expectations with regard to services being delivered in a manner that promotes/supports community integration to the extent of the individual's preferences and desired outcomes.

*Comment:* Several commenters expressed strong support for the setting integration provision, but recommended modifying § 441.530(a)(1)(i) to specify that the employment-related provision apply only to those individuals who are interested in being employed. They

recommended modifying § 441.530(a)(1)(i) by adding the following language ''for those individuals interested in being employed'' following the words ''integrated settings.'' Another commenter recommended the following revision to § 441.530(a)(1)(i): ''For individuals seeking to enter the job market, the setting should include opportunities to seek employment and work in a competitive integrated setting. For all individuals, the setting should permit them to engage in. . . .''

*Response:* We believe that individuals should be supported in seeking employment when interested in being employed and that the statement ''opportunities to seek employment'' implies choice. In addition, we believe that adding the suggested language to the regulation text is unnecessary.

*Comment:* One commenter offered support of CMS' general approach of identifying the characteristics of integrated care, but suggested that CMS will need to take an active monitoring role to ensure that all the individual quality requirements are enforceable.

*Response:* States are required to demonstrate at the time of approval that quality measures with a monitoring plan are in place. This information must be included in the SPA and at a frequency to be determined by us or upon request by us. The review and monitoring of quality requirements will be covered in future guidance.

*Comment:* One commenter stated that, it would be unpatriotic to curtail any services in a manner that would adversely affect humans with limited abilities.

*Response:* It is not our intention to negatively impact any individuals we serve. Rather the purpose of the rule is to ensure that states will be better able to design and tailor Medicaid services to accommodate individual's needs and preferences.

*Comment:* Commenters stated that all people need meaningful choices about where and with whom they live, how they spend their time and their activities, friends, and services (including who provides them). Permitting individuals the freedom to make their own choices allows them to remain as independent as possible. One commenter applauded efforts that focus on the individual's ability to choose his or her own life setting and one that promotes community rather than institutions. Several commenters noted that while providers may make different choices than the client and have a different perspective, the provider must respect and honor the choices and autonomy of people with disabilities. One commenter supports the proposed language as long as it provides assurances that real alternatives exist. Additionally, another commenter recommends reinforcing the idea that states should provide unbiased and informed options counseling for individuals seeking HCBS so that individuals are able to choose the setting that best assists them in meeting their needs and life goals.

*Response:* We agree that meaningful choices that allow individuals to make decisions that best meet their needs are important. In addition, they should be addressed as part of the person-centered planning process and reflected in the individual's person-centered service plan.

*Comment:* One commenter stated that the proposed regulation would eliminate or at least severely restrict client and family choice of program options and opportunities and that consumers and families need more options, not fewer during these difficult times. Several other commenters expressed serious concern that the proposed regulation will eliminate instead of enhance choice for individuals with significant disabilities.

*Response:* We disagree. We are not eliminating the choice of institutional options. We are specifying the qualities necessary for settings to be considered home and community-based settings.

*Comment:* Many commenters stated the proposed language in § 441.530(a)(1)(ii) and § 441.656(a)(1)(ii) should be modified to more closely reflect the tenets of the ADA and the *Olmstead* decision by including additional language that conveys the individual's choice of setting must be an informed choice, based on more than verbal descriptions or pictures of alternatives. Modifications should include language that permits individuals a meaningful opportunity to choose from among all available alternatives. Commenters conclude that the level of specificity with which a particular setting must be identified in a service plan is not clear and the requirement could inappropriately prevent individuals from receiving services when their desired living setting is specifically identified in a service plan.

*Response:* We believe the final regulation language supports these principles. Within future guidance, we will reinforce the importance of complying with other federal requirements such as ADA and *Olmstead.*

*Comment:* One commenter recommends striking the word ''available'' from § 441.530(a)(1)(ii) and § 441.656(a)(1)(ii) of the proposed regulation. The commenter believes that this word could limit choices of HCBS settings offered to individuals and offers the example of long waiting lists for certain section 1915(c) HCBS waiver programs/settings not being considered and reflected in the person-centered plan due to lack of availability.

*Response:* We have revised § 441.530(a)(1)(ii) pertaining to CFC settings and the final regulation text at § 441.710(a)(1)(ii) and we have removed the term ''available.''

*Comment:* One commenter was supportive of this language as written. Another commenter supported CMS' proposed list of essential personal rights in this section. The commenter stated that, in addition to freedom from coercion and restraint, people with disabilities in a community setting should have the freedom to pursue their sexuality, voting, and worship. In addition, a community setting should not be permitted to restrict access to the community as a form of punishment.

*Response:* We are concerned that one of the commenters believes we have provided a comprehensive list of rights. The factors related to determining whether settings are home and community-based and the description of the rights that individuals must have in these settings are not intended to be an exhaustive list of all legal rights of the individual. Individuals have many other legal rights not addressed in this regulation. For example, civil rights against various forms of discrimination are protected under the ADA and elsewhere. We regularly work with the HHS Office for Civil Rights, Department of Justice (DOJ), and others to assure that we provide appropriate guidance and assistance to states related to civil rights issues that bear on Medicaid requirements.

*Comment:* Many commenters stated that the inclusion of ''essential personal'' may create confusion and suggest that the term be omitted from § 441.530(a)(1)(iii) to more clearly demonstrate intent to protect the individuals' human rights. Several commenters indicated that they strongly agree that these important personal rights should be protected. However, as currently written the placement of ''essential'' may imply that other rights are not essential and thus do not need to be protected. These commenters recommended removing the term ''essential'' from this paragraph.

*Response:* We agree with the suggested revision to § 441.530(a)(1)(iii) and have finalized the provision at § 441.710(a)(1)(iii) by removing the words ''essential personal.''

*Comment:* One commenter generally supports the proposed language, but recommends that CMS delete the reference to restraint and/or provide an exception when the individual has a documented history of risk of elopement or susceptibility to behavioral flare-ups that can only be controlled by temporary restraint.

*Response:* We disagree with the recommendation as this is an important protection.

*Comment:* Several commenters supported the protection of independence and the autonomy of individuals in making life choices. One commenter stated that the post-rulemaking implementation must ensure that the intent of the proposal is carried out in practice. Another commenter generally supported the proposed concept, but noted that the life choices principles are dictated by the service provider and not the setting.

*Response:* The State Medicaid Agency will be responsible for ensuring that the HCB setting requirements are met by providers who own or control settings where individuals reside and/or receive services.

*Comment:* Some commenters stated that the language may potentially result in limited choice, scattered living proposals, limiting staffing resources and increasing costs associated with some individuals choosing to live secluded from others with disabilities. The commenter stated that individuals make choices that increase their independence (within the resources that are provided through Medicaid) based on informed experiences to ''live and play'' with others who are developmentally disabled because they have much in common. Another commenter disagreed with this proposed requirement and believes that individuals should have the right to choose where they want to live. Commenters stated that one size does not fit all and that different populations have differing needs. Commenters supported an individual's right to choose to reside in a living arrangement that best suits his/her needs. The commenter also stated that this proposed requirement would eliminate important options that now contribute to the array of settings available to adults with disabilities and the elderly and the move to a more restrictive setting would ignore the participant's choice, diminish the participant's quality of life and increase costs to Medicaid.

*Response:* We believe that individual choice is important and we have worked to promote choice in the final rule, though we also acknowledge the challenge of doing so in a manner that addresses the interests of diverse populations with differing needs. We have revised the language in the final rule to be more flexible and less prescriptive. Instead of automatically excluding certain settings from qualifying as HCB, the language in the final rule includes a presumption that these settings are not HCB. In other words, we will assume that certain types of settings—specifically, those located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, on the grounds of or immediately adjacent to a public institution, or any other setting that has the effect of isolating individuals receiving HCBS from the broader community—are not HCB, but afford states the opportunity to refute this categorization by providing additional information about the characteristics of specific settings. We have also included language in the final rule that focuses on the critical role of person-centered planning and addresses fundamental protections regarding privacy, dignity, respect, and freedoms.

*Comment:* Several commenters recommended that CMS delete the phrase ''and not regimented'' from the proposed language. The commenters expressed concern that under the proposed language, group programming could be viewed as ''regimented'' because it is provided in a congregate setting. One commenter noted that structured activities and socialization opportunities could be deemed inappropriate under the proposed language since they may be provided in a uniform manner.

*Response:* We disagree with removing this language from the final rule. We do not intend to invalidate all activities in a congregate setting. Individuals must be afforded choice regarding the activities in which they wish to participate including whether to participate in a group activity or to engage in other activities which may not be pre-planned.

*Comment:* One commenter recommended adding the following language to this provision of the rule: ''(iv) Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized to the greatest extent possible and not regimented.'' One commenter recommended that CMS clarify that the term ''optimized'' refers to the individual's autonomy and does not refer to optimizing the institution's promotion of autonomy. Another commenter requested that CMS clarify who will determine and how to determine whether the individual initiative, autonomy, and independence in making life choices were optimized.

*Response:* We do not believe that ''to the greatest extent possible'' adds significantly to the term ''optimized.'' We believe the commenter's concern about referencing individual autonomy is addressed in the regulation language. There are a number of methods inherent in the flexibility of the HCBS benefits to determine who and how the individual's initiative, autonomy, and independence are optimized.

*Comment:* Many commenters stated that an individual's choice regarding services and supports and who provides them is a key element of HCBS and, thus, must be ensured. Some commenters suggested substituting the word ''ensured'' in place of ''facilitated.'' One commenter stated that the word ''facilitated'' establishes a weak standard and should be replaced with ''maximized.'' Another commenter suggested that individuals be given choices about when services are provided and recommended deleting ''is facilitated'' and replacing it with ''is honored'' for further assurance. One commenter stated that an individual's choice must be ensured, meaning ''made certain or safe'' and stated that in a home and community-based setting, personal choice should not only be brought about, but is safe. Another commenter expressed concern that ''is facilitated'' is not used to water down individuals exercising choice over services, supports, and providers. The commenter stated that some individuals may need assistance in exercising choice and the commenter suggested revising this criterion to note that support should be provided, as needed, to facilitate such choices and to acknowledge that an individual's chosen representative may be acting on behalf of the individual.

*Response:* After consideration of the commenters' thoughtful suggested text changes, we believe the proposed text/language reflects the intent of the provision.

*Comment:* Several commenters indicated that provider owned or controlled settings licensed by state law have requirements that make them responsible for the well-being of the resident and restrictions on who (in addition to the licensed provider) can provide services in the setting. Commenters stated that residents' rights allow for individuals to supplement existing services provided by the providers, but not replace them. Several commenters recommended revisions to

this section of the rule and some of the commenters suggested that language be included to reference state licensure laws and licensing entities.

*Response:* We disagree with the suggested changes. Some of these were too descriptive to include in regulation and could have the effect of excluding numerous populations served through HCBS programs. We will instead consider these suggestions in future guidance.

*Comment:* One commenter requested that the rule clarify how a person's choice about the type of services they want and who they want to provide them ''is facilitated.'' The commenter suggests this can be done by clarifying the qualifications that the facilitator must possess—for example, the facilitator must be knowledgeable of all community-based options (not only those that are considered readily available) and must be able to present options in a way that is accessible and is sensitive to the person's disability-related communication needs.

*Response:* States are responsible for determining the provider qualifications of the entities who will conduct the assessments and person-centered planning process as long as the requirements in the final regulations have been met. It is expected that these entities would have adequate training to perform this function. We agree that additional guidance should be provided to states and we intend to issue future guidance regarding the person-centered process and how we intend to apply it across Medicaid HCBS programs.

*Comment:* Several commenters supported the additional conditions stating that they are critical to ensuring that provider-controlled settings designated as home and community-based operate in a way that promoted choice, autonomy and independence.

*Response:* We appreciate this comment of support regarding the importance of the additional conditions.

*Comment:* One commenter generally supported the provisions but suggested that the language include ''health needs'' in addition to ''safety needs'' and that the term ''dementia'' be changed to ''cognitive impairment'' to include individuals with severe mental illnesses, traumatic brain injuries, and developmental disabilities, as well as Alzheimer's and other forms of dementia.

*Response:* The reference to dementia was only included as an example and was not meant to convey all of the possible situations in which a modification of the conditions might be supported by a specific assessed and documented need. We have, therefore, removed this example from regulation text as this is more appropriate for us to address in future guidance, and we will consider these comments in that context.

*Comment:* Several commenters strongly agreed with the proposed language requiring that should a provider choose to modify conditions, changes must be supported by documentation in the person's service plan. Another commenter expressed support of CMS' efforts to allow necessary flexibility to address individual circumstances in provider-based settings, but urged CMS to allow flexibility in interpretation of the language, ''specific assessed'' need. Two commenters also expressed concern over this language, noting that in some instances residents may require services based on overall condition rather than a specific assessed need and suggested revision to this subsection of the rule.

*Response:* We acknowledge and appreciate support of the requirement that any modification of the conditions for provider-owned or controlled residential settings must be supported by a specific assessed need and documented in the person-centered service plan. However, we disagree that such modification would be acceptable based on a condition that does not also result in a specific assessed need of an individual. Allowing for modifications based on a condition that is not also supported by a specific assessed need and documented in the person-centered service plan could result in decisions being made based on global assertions as opposed to individual need, and thus be contrary to the purpose of this section of the rule. Therefore, we have not made the requested revision to this requirement.

*Comment:* Several commenters stated that modifications must be related to a clearly established assessed need and recommended a change to the proposed rule so that the requirements must apply to all settings where services are provided, regardless of whether or not they are controlled by the service provider.

*Response:* We agree that any modification of additional conditions must be based on the specific assessed need of the individual. The regulation includes qualities that apply to all home and community-based settings, but we disagree that the additional requirements for provider-owned or controlled settings must be required of all settings where services are provided, regardless of whether or not they are provider-owned or operated. The additional conditions were designed to ensure that individuals who are living in settings in which the individual does not have ownership or control, will be afforded the same opportunities and community access as individuals living in their own private or family homes.

*Comment:* One commenter recommended that States should be able to detail their own policies and practices to address rights and restrictions as part of their application for HCBS authority, an expectation currently embedded in the waiver application but not in regulation.

*Response:* We disagree that states should detail their own policies to address rights and restrictions. Based on our experience and on input received from the public, we believe we must set these minimum additional conditions to ensure individual rights are protected.

*Comment:* Several commenters stated that CMS should take into account the differences between different disabilities in determining when departure from the additional conditions may be permitted. These commenters stated that, if CMS allows for the modifications to provider requirements, CMS should require that the restrictions be directly proportionate to a specific safety need and be reviewed for effectiveness and continuing need.

*Response:* Any modifications of the conditions can only be considered on an individual basis in accordance with the person-centered planning process and documented in the person-centered service plan in accordance with section 441.725.

*Comment:* One commenter recommends adding a component whereby direct feedback is gathered from the beneficiary or the beneficiary's representative regarding initial and ongoing overall satisfaction with the modification of conditions.

*Response:* The rule has been modified to require that any modification to the additional conditions under § 441.710(a)(1)(vi)(A) through (D) must have the informed consent of the individual (or representative).

*Comment:* One commenter stated that a modification may be needed to reflect the involvement of an individual's representative, as appropriate, when individuals are unable to act on their own behalf.

*Response:* The regulation already specifies the involvement of an individual's representative in the evaluation of eligibility (§ 441.715), independent assessment (§ 441.720), and person-centered service plan (§ 441.725). The regulations also include a definition for individual's representative in section 441.735 of this subpart. Since any modifications of the

conditions would need to comply with the requirements for these processes, we do not believe that modification to the regulation text is needed.

*Comment:* We received some comments related to the difficulty of achieving compliance with the proposed requirements. A few commenters expressed concern that the conditions for provider-driven settings might exclude assisted living residences (ALRs), as it remains unclear whether they would meet the proposed criteria. Another commenter expressed great concern that privately-owned residential settings that have proven successful in their state would not qualify under the proposed guidelines since many would not provide separate kitchens or sleeping and living areas. Another commenter stated that this regulation severely restricts program options and opportunities because of the impact the regulation has on HUD financed housing owned by providers, and that this regulation would restrict the use of HCBS waiver funding for services provided in these settings.

*Response:* We believe there will be residential settings that meet the HCB requirements as outlined in this regulation. However, we recognize that there may be some residential facilities that may not currently meet all of the HCB setting requirements for provider-owned or controlled settings. We will allow states a transition/phase-in period for states to demonstrate compliance with the requirements. In an effort to balance those comments that were concerned with the loss of a residential setting and the subsequent displacement of the service recipient based on the settings requirements and those comments that urged us to draw an immediate and clear demarcation for HCBS, our expectation is that the transition plan would facilitate a brief transition period wherever possible. However, we will afford states the opportunity to propose a transition plan that encompasses a period up to five years after the effective date of the regulation if the state can support the need for such a period of time. States are expected to demonstrate substantial progress toward compliance throughout any transition period.

*Comment:* One commenter expressed concern that the proposed language requires full participant direction even when such direction may not be appropriate for certain populations.

*Response:* Self-direction is an optional service delivery method, not a federal home and community-based setting requirement in the proposed or the final rule.

*Comment:* Many commenters indicated that the proposed language provides an unchecked and overbroad right for a service provider to modify any of the requirements, as long as the modification is supported by an assessed need and documented in a service plan. The commenters stated that CMS should allow modifications of the ''additional conditions'' only in rare and extraordinary circumstances, and then only after a provider has documented that less intrusive measures have already been tried, data has been collected on the modification's effectiveness, and the need for the modification has been reviewed at least quarterly. Many commenters stated that allowable modifications should be limited to the requirements pertaining to access to food and lockable doors. Several commenters stated that the only appropriate reason to modify any of the listed conditions would be to address safety needs, and several recommended a revision to this subsection of the rule. However, other commenters stated that there is no reason for an exception/modification under any circumstances for many of the requirements and have recommended revisions to the regulation.

*Response:* We agree with the commenters that the basis for modifications should be justified through the person-centered planning process. The service provider does not lead the person-centered service planning process; it is driven by the individual and includes people chosen by the individual. We have revised the rule to require that any modification to the additional conditions under § 441.710(a)(1)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan. We also delineated specific requirements to support that justification as well as expectations for the intervention.

*Comment:* Several commenters asked how frequently the assessment must be made if the condition causing the modification of the ''additional conditions'' was not likely to improve. One commenter recommended that CMS amend the current language to clarify that the specific assessed need must be of the individual, and should indicate that a determination has been made regarding the timeframe that the modification of conditions will be in effect.

*Response:* Per the response to the previous comments, we have revised the rule to require that any modification to the additional conditions under § 441.710(a)(1)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan. We also state in the rule that reviews and any needed revision of the independent assessment and the person-centered service plan, must occur at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

*Comment:* Several commenters stated that CMS should not allow any departures from or modifications to the conditions.

*Response:* We disagree as there may be reasons why a modification of the conditions may be necessary.

*Comment:* One commenter offered general support of the proposed language's intent and believes that the ''legally enforceable agreement'' condition should never be limited, or modified.

*Response:* We appreciate the commenter's support and concern. While the final rules maintain the ability for a provider to modify this condition, we have added that this must be supported by a specific assessed need and justified in the person-centered service plan and delineated specific requirements to support that justification.

*Comment:* Several commenters stated that CMS should clarify that all settings in which the individual does not have a regular lease or full ownership (including adult foster care settings) be considered provider-controlled.

*Response:* For the purposes of this rule, a setting is considered provider-owned or controlled, when the setting in which the individual resides is a specific physical place that is owned, co-owned, and/or operated by a provider of HCBS.

*Comment:* Several commenters suggest that CMS clarify that all settings that require individuals to automatically transfer their income to service providers for the purpose of SSI/SSDI or other disability payments are not HCB settings for purposes of the Medicaid program.

*Response:* Room and board is not covered under Medicaid state plan HCBS. This rule does not specify how payment for room and board should be made.

*Comment:* One commenter expressed that all requirements listed for provider-owned or controlled settings should be a part of the final rule. The commenter also indicated concern that the example given in the rule creates the impression that addressing safety needs of persons with dementia is only one of many possible examples of how conditions might be modified.

*Response:* This was only intended as one example of this provision and is not depicting a full range of possible situations. To avoid confusion, and to clarify that person-centered planning is based on the person and not on his/her diagnosis, we have deleted this example from the regulation text.

*Comment:* One commenter stated that, in addition to the provisions at § 441.530(a)(1)(vi) and § 441.530(a)(2)(v), other provisions can be used to ensure that the settings in which residents receive 1915(k) CFC services are designed to facilitate the actual integration of the residences that are provider-owned or controlled for providing residential support to recipients.

*Response:* We agree with the commenter. For a setting proposed under 1915(k) CFC to be determined home and community-based, the setting must meet all requirements set forth in § 441.530.

*Comment:* One commenter urged CMS to give serious consideration to striking the ''conditions for provider-driven setting'' provision. The commenter stated that though the rules attempt to create a homelike environment by proposing conditions, no reasonable person would accept these conditions as homelike. In addition, the commenter stated that regardless of the size of a provider controlled setting, the very nature of these environments isolates, congregates and segregates the individuals living there, and limits personal freedom.

*Response:* We disagree. We believe there are provider-owned or controlled settings that not only meet the overall HCB qualities but also meet the additional conditions and allow for full integration into the community; therefore, we will keep the conditions to ensure the standards for HCB settings are met. We believe the commenter's request to delete the conditions for provider-controlled settings would not accomplish the suggested purpose.

*Comment:* Several commenters suggested that CMS consider giving human rights reviewing committees the added responsibility of reviewing modifications, and requiring a clear appeals process for any individual who does not agree to the conditions.

*Response:* We have amended the regulations to include a requirement for informed consent and we specified that any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. We will add further descriptions in future guidance.

*Comment:* Several commenters request that CMS specify the requirements for provider-controlled settings so that providers and developers get the message that facilities cannot be built or established that are not the most integrated settings.

*Response:* We believe that all home and community based settings should be integrated into and allow access to the greater community and our regulation already outlines additional criteria that must be met to qualify as a home and community-based setting where the setting is provider-controlled. Adding further criteria may be too prescriptive and could limit individual choice of settings.

*Comment:* A few commenters believe the proposed regulations would eliminate or severely restrict HCBS in group homes for people with disabilities in which providers have adopted reasonable policies governing their operation designed to respect the individual's rights and at the same time respect the rights of other residents.

*Response:* Based on our experience and significant public input, we believe we must set minimum additional conditions for provider-owned or controlled settings to ensure that they are home and community-based. The commenters did not indicate which conditions would result in this impact, nor provide suggestions for minimum conditions to meet the intent of this provision of the rule. In an effort to address the concerns raised by commenters who feared loss of current residential options and the subsequent displacement of the individuals living in such settings who receive HCB services and the concerns raised by other commenters who urged us to draw an immediate and clear line of demarcation for HCBS, we will permit states to propose transition plans for existing approved HCBS under 1915(i) in accordance with section 441.710(a)(3). While our expectation is that states would transition to compliance with this final rule in as brief a period as possible, we will allow states to propose a transition plan that encompasses a period up to five years after the effective date of the regulation if the state can support the need for such a period of time. States are expected to demonstrate substantial progress toward compliance throughout any transition period.

*Comment:* One commenter believes the proposed regulations are biased against provider-owned or controlled residential settings through the proposed imposition of additional regulatory conditions on such settings. The commenter believes that many provider-owned residential settings are developed to assist with improving the availability of accessible and affordable housing so that individuals with developmental disabilities have some choice in community housing options and can avoid the need for unnecessary institutionalization.

*Response:* We believe that it is appropriate to specify additional conditions for provider-owned or controlled settings to ensure that all individuals receiving HCBS are afforded the opportunities that are characteristic of living in the community.

*Comment:* A few commenters stated their belief that the focus should not be on the setting, but rather an individual's choices and the person-centered service plan. The commenter stated that arbitrary geographic or location specific criteria are not appropriate, and if a provider-based setting can meet all of the criteria in § 441.530(a)(1) or § 441.710(a)(1), it should not matter where the provider is located.

*Response:* We agree with these comments and believe the regulatory language at § 441.530(a)(1) and § 441.710(a)(1) achieves this purpose.

*Comment:* One commenter applauds use of the more general term ''provider-owned or controlled residential settings,'' but since CMS is creating a new technical term defining a class of services, it would be prudent to offer clearer regulatory guidance regarding the reach of such a term. For example, would an elderly housing project that included service coordination and other services be subject to these provisions as a provider-owned residential setting? CMS may want to consider limiting this term to apply to state-licensed or certified settings to avoid confusion.

*Response:* We are not defining a class of services. We are describing the conditions that provider-owned or controlled settings must meet to be considered home and community-based settings. If the elderly housing project is provider-owned or controlled, it would have to meet these additional HCB setting conditions. We do not believe limiting the application of the term ''provider-owned or controlled residential settings'' to those licensed or certified by the state is in the best interests of the individuals served under the HCBS programs, nor would that approach be adequate to achieve the goal of defining the qualities and other requirements for settings that are home and community-based.

b. Target Population

The Affordable Care Act added section 1915(i)(7) to the Act, which allows states to target the section 1915(i)

benefit to specific populations. We proposed that target population(s) may be based on diagnosis, disability, Medicaid eligibility groups, and/or age. States may target services only to eligible individuals in their chosen target groups, or provide different services within the 1915(i) benefit to different target groups. Due to the ability to define targeted populations, a state may now propose more than one set of section 1915(i) benefits, with each benefit package targeted toward a specific population. A state may also propose one section 1915(i) benefit that targets multiple populations, and may offer different services to each of the defined target groups within the benefit. Additionally, a state may propose a section 1915(i) benefit that is not targeted to a specific population and instead uses only the needs-based criteria to establish eligibility for the benefit. The targeting option does not permit states to target the benefit in a manner that would not comply with section 1902(a)(23) of the Act regarding free choice of providers, or that forestalls the opportunity for individuals to receive services in the most integrated setting possible. Therefore, targeting criteria cannot have the impact of limiting the pool of qualified providers from which an individual would receive services, or have the impact of requiring an individual to receive services from the same entity from which they purchase their housing. For example, we would not allow states to establish targeting criteria that would restrict eligibility to only individuals who reside in provider-owned and/or operated settings. If a state elects to target the benefit to a specific population or populations, it must still establish needs-based criteria that individuals must meet in order to be eligible for section 1915(i) of the Act services and the state may also establish needs-based criteria for individual services within the benefit. The needs-based criteria may include specific needs that are applicable to the targeting criteria, but may also include general needs that apply across all of the populations included in the benefit.

*Comment:* One commenter requested that CMS not limit people seeking mental health treatment.

*Response:* We believe this commenter has misunderstood the intent of this provision of the rule, which does not allow states to limit number of participants but allows states the option to target section 1915(i) of the Act to specific population types. So in this example, a state could target a section 1915(i) benefit to individuals with a chronic mental illness, but would not be able to limit or cap the number of people meeting this target criterion. Anyone meeting this target criterion, and also meeting the other eligibility requirements under section 1915(i) of the Act, would be eligible to receive any needed services included in the state's benefit.

*Comment:* A couple of commenters pointed out that the reference to target criteria in § 441.656(b)(2) of this section was incorrect.

*Response:* We thank the commenters for noting this error and we have corrected this reference so that it now reads as ''§ 441.710 (e)(2).''

*Comment:* Two commenters expressed concern that allowing multiple target groups within one 1915(i) state plan HCBS benefit might result in a net reduction of service availability, and lead to institutional care. One ''fears that the blending of target audiences'' will ''leave the voiceless minority without access to adequate services.''

*Response:* As an optional approach available to states, this option is not intended to restrict or compromise service availability. States can choose which services they will offer under a 1915(i) State plan benefit, regardless of whether they take up the additional option to target a population(s). As with all state plan services, states must offer all needed services that they choose to include under their benefit to all who are eligible.

*Comment:* One commenter expressed concerns that allowing states to serve multiple target populations in one benefit will lead to states serving ''incompatible populations in the same service setting.'' They cited examples in states where individuals with one type of disability were harmed by others with a different disability, and requested CMS to expressly prohibit states from serving different populations in the same location.

*Response:* This section of the regulation does not speak to combining different target groups in the same living situations, but rather the inclusion of multiple target groups in the overall benefit design and operation. Including multiple target groups in one benefit will not alleviate responsibilities of States for quality assurance and detailing their quality improvement strategies for that benefit.

*Comment:* A few commenters indicated that we should explicitly state that ''a state may propose more than one set of section 1915(i) of the Act benefits, with each benefit package targeted toward a specific population'' and that the state may also target multiple populations under one set of benefits or offer different services to each of the defined target groups within the benefit.

*Response:* Under § 441.710(e)(2)(ii) of the regulation text, we specify ''The State may elect in the State plan amendment to limit the availability of specific services defined under the authority of § 440.182(c) or to vary the amount, duration, or scope of those services, to one or more of the group(s) described in this paragraph.'' In the preamble to the proposed rule, we stated ''Due to the ability to define targeted populations, a state may now propose more than one set of section 1915(i) benefits, with each benefit package targeted toward a specific population. A state may also propose one set of section 1915(i) benefits that targets multiple populations, and may offer different services to each of the defined target groups within the benefit. Additionally, a state may propose a section 1915(i) benefit that does not choose non-application of comparability and instead uses only the needs-based criteria to establish eligibility for the benefit.'' A change to the regulation text is not necessary but we will include this information in future guidance.

*Comment:* One commenter recognized the benefit of the targeting option as ''many states will not consider the State Plan HCBS benefit if it does not include mechanisms to control costs, especially given this existing economic climate.'' However, the commenter also noted that ''generally systems should be designed to promote community access over institutional access, regardless of individuals' presenting characteristics.''

*Response:* We agree with this commenter and note that the ability to target the benefit to specific populations is a state option afforded by section 1915(i) of the Act, and thus, not something being made available solely through this regulation.

*Comment:* A couple commenters noted that § 441.656(e)(2)(ii) references ''§ 440.182(b)'' which should be referenced as § 440.182(c).

*Response:* We thank the commenters for noting this error and have corrected this reference at § 441.710(e)(2)(ii) so that it now references services defined under the authority of § 440.182(c).

*Comment:* A couple of commenters requested that the regulation explicitly state in § 441.656(e) that states may propose a section 1915(i) benefit that ''does not choose non-application of comparability and instead uses only the needs-based criteria to establish eligibility for the benefit.''

*Response:* Revision to regulatory text is not needed as § 441.710(e)(2) already specifies that disregarding

comparability is a State option: ''In the event that a State elects not to apply comparability requirements:* * *'' And § 441.715 specifies the requirement that States establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit.

6. Needs-Based Criteria and Evaluation (§ 441.715) (Proposed § 441.659)

Section 1915(i)(1)(A) of the Act requires states to establish needs-based criteria for eligibility for the State plan HCBS benefit. Institutional level of care criteria must be more stringent than the needs-based criteria for the State plan HCBS benefit. Additionally, the state may establish needs-based criteria for each specific State plan home and community-based service that an individual would receive.

*Comment:* Some commenters supported the use of needs-based criteria in determining eligibility for State plan HCBS. Several also expressed appreciation of the statutory requirement that a state notify CMS and the public 60 days in advance of any proposed restriction on the needs-based eligibility criteria (adjustment authority), if the number of individuals enrolled in the benefit exceeds the projected number submitted annually to CMS. These commenters agreed that notification to CMS should take the form of a State plan amendment.

*Response:* We appreciate these comments supporting this provision of the rule.

*Comment:* A couple of commenters suggested that CMS clarify that a 60-day public notice be required for any changes in need-based criteria, as well as any related level of care changes, and to include notifying the individual and any authorized representative. They also requested that this notice include guidance for states on the individual's appeals rights and stipulate that appeals information must be included in communications to individuals. A couple of commenters also recommended a formal comment period, to provide an established mechanism for public input on the state proposed modification prior to federal action.

*Response:* Section 441.715(c)(1) requires states to provide at least 60 days notice of a proposed modification of the needs-based criteria to the Secretary, the public, and each individual enrolled in the State plan HCBS benefit. In addition, § 441.715(c)(5) requires any changes in service due to the modification of needs-based criteria under the adjustment authority to be treated as actions as defined in § 431.201 and these actions are subject to the fair hearing requirements of part 431 subpart E of this chapter. States are also required under § 431.12 to provide for a medical care advisory committee to advise the Medicaid agency director about health and medical care services, and the committee must have the opportunity for participation in policy development and program administration. We encourage states to seek effective public engagement in all of their Medicaid 1915(i) activities.

*Comment:* A couple of commenters recommended a formal comment period/participant notice be required when a state proposes to change its level-of-care criteria for institutional care.

*Response:* Criteria for institutional care (level of care) are set by states as a means to determine an individual's medical necessity for a service. These criteria are state policy, not approved by us, and not articulated in the Medicaid State plan, so we do not have an opportunity to require notice or comment periods. States could adopt their own notice and comment requirements. We note that to the extent a change in level of care would affect access to Medicaid services, states are required to notify beneficiaries and provide an appeal process. We may review state institutional level of care criteria, for example, to determine if stringency requirements are met in considering a state plan amendment to establish the State Plan HCBS benefit under section 1915(i) of the Act. Such review is for approval of the proposed benefit, not approval of the level of care criteria, and our review does not reopen state level of care policy for public comment.

*Comment:* A couple of commenters recommended that we change ''will'' to ''may'' in the proposed regulatory language so that CMS will retain some discretion to adapt to unexpected circumstances.

*Response:* We agree with this recommendation from commenters. This sentence in the regulation at § 441.715(c) now reads ''The Secretary may approve a retroactive effective date for the State plan amendment modifying the criteria, as early as the day following the notification period required under paragraph (c)(1) of this section, if all of the following conditions are met . . .''

*Comment:* One commenter recommended that the 60 day written notice to the Secretary (for proposals to revise needs-based criteria) be provided at the same time as tribal notice is made, 60 days in advance of submission of the State plan amendment.

*Response:* We acknowledge the comment with the following reminders: § 430.16 provides the Secretary 90 days to approve or disapprove a State plan amendment, or request additional information. If the state implements the modified criteria prior to the Secretary's final determination with respect to the state plan amendment, the state would be at risk for any actions it takes that are later disapproved. Further, Section 5006(e) of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, codified at section 1902(a)(73), requires states to solicit advice from tribes and Indian Health Programs prior to the state's submission of any Medicaid or CHIP State plan amendment likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations. The statutory requirement is that states must solicit this advice prior to submission of a SPA or waiver to CMS following the process described for soliciting advice from Indian Health Providers and Urban Indian Organizations in each state's approved State Plan.

*Comment:* One commenter requested revision to § 441.659(b) to specify that there it is not a requirement that institutional or home and community-based waiver criteria be higher than their level prior to implementing the State plan HCBS benefit.

*Response:* We are unable to make this revision as it is would not comport with section 1915(i)(1)(B) of the Act, which requires needs-based criteria for receipt of services in nursing facilities, intermediate care facilities for individuals with intellectual disabilities, and hospitals, or waivers offering HCBS, to be more stringent than the needs-based criteria for the State plan HCBS benefit.

*Comment:* One commenter indicated that their state is attempting to further change the Medicaid institutional level of care criteria to restrict Medicaid eligibility to the lower need individuals in several categories of settings, including the HCBS setting, and expressed concern about how the federal proposal would intersect with this state proposal, and whether the criteria would align, be duplicative, or conflicting.

*Response:* In order to implement and maintain section 1915(i) State plan HCBS, the state's institutional level of care criteria must be more stringent than the needs-based criteria for the State plan HCBS benefit.

We note that there are issues for states to consider other than section 1915(i) of the Act that will influence decisions on levels of care and needs-based criteria,

that are beyond the scope of this regulation, for example, statutory requirements for maintenance of effort (MOE) in effect at the time of this final rule, requirements of the ADA and the *Olmstead* decision, and funding constraints. Under section 2001(b) of the Affordable Care Act, States are not permitted to establish eligibility standards, methodologies, or procedures that are more restrictive than those in place on the date of the Affordable Care Act's enactment (March 23, 2010). For adults, this requirement lasts until the Secretary determines that a health insurance exchange is fully operational in the state; for children under the age of 19, the requirement lasts until September 30, 2019. Because the application of LOC requirements for institutions and HCBS waivers may have an impact on Medicaid eligibility for some individuals, we encourage states interested in using the State plan HCBS to contact CMS for technical assistance in meeting these statutory requirements.

*Comment:* While several commenters expressed support for grandfathering of institutional and waiver participants when states increase stringency for institutional level of care, they also had concerns that the stringency requirements might be interpreted to allow a state to change the needs-based criteria between the institutional and waiver level of care and the state plan home and community-based level of care with the net effect that people would not be eligible for either. They recommended that CMS revise the regulation to require states to grandfather HCBS participants who would lose Medicaid eligibility due to ''stringency'' adjustments. Two other commenters also noted that CMS misinterpreted the statute where it specifies that FFP ''shall'' continue to be available, as a state option stating their belief that this indicates a state requirement and not an option.

*Response:* The statute at section 1915(i)(5) of the Act does not create a mandate for states to continue to provide assistance to such individuals and to claim FFP. The statute permits states the option to continue receiving FFP for individuals who are in an institution or HCBS waiver, if a state needs to modify section 1915(i) needs-based criteria after implementation of a section 1915(i) benefit, and also needs to modify institutional needs-based criteria in order to meet the 1915(i) stringency requirement. Therefore, we have not adopted this change as requested to regulation text language at § 441.715(b)(2). However, we note that other legal provisions, such as those related to discharge planning, might require the continued provision of certain services to individuals.

*Comment:* One commenter recommended deletion of the provision at proposed § 441.659(c)(4)(ii). The commenter believes that the HCBS population has predictable fluctuations in status and therefore the grandfathering provision should be flexible enough to protect individuals who go through short-term transitions.

*Response:* We disagree with this recommendation and have not made this revision as requested. Section 441.715(c)(4)(ii) is an important provision that requires states, when they revise needs-based criteria after implementation of the benefit (adjustment authority), to continue providing State plan HCBS to individuals who were eligible prior to the change but no longer meet the state's new needs-based criteria until such time as they no longer meet Medicaid eligibility requirements or eligibility requirements to be served under the state's section 1915(i) benefit.

*Comment:* One commenter recommended that CMS define the term ''independent'' in the regulation.

*Response:* This is defined at § 441.730. Section 441.715 already indicates that an agent (who performs the evaluation) must be independent and qualified as defined in § 441.730.

*Comment:* A couple of commenters commended the inclusion of a requirement at § 441.659(d)(3) to consult with the individual, but recommend this be defined and strengthened to include a more central role for the individual, including for example consultation with providers, social service staff, or others identified by the individual. Another requested § 441.659(d)(3) be changed to reflect that the person-centered service plan should have the person ''directing'' the plan whenever possible and suggested that if the individual wishes, other people of the individual's choice be consulted.

*Response:* This section of the rule pertains to the independent evaluation to determine eligibility. Therefore, we do not believe it is necessary to include requirements about the person-centered service planning process, for which there are separate regulations at § 441.725(a) and which already reflect the recommendations of this commenter.

*Comment:* A couple of commenters noticed that § 441.659(b)(2) includes an incorrect reference to (c)(7).

*Response:* We have corrected the text in § 441.715(b)(2) of the final rule to change the reference from (c)(7) to (c)(6).

*Comment:* One commenter noticed that § 441.659(d) incorrectly references § 441.656(a)(1) through (5), and that § 441.659(d)(2) incorrectly references § 441.656(a)(1) through (3) and (b)(2).

*Response:* In § 441.715(d), we have corrected the reference so that it now reads as § 441.715. In § 441.715(d)(2), we have also revised the reference so that it now reads correctly as § 435.219 and § 436.219.

*Comment:* One commenter requested that we eliminate the word ''eligibility'' from § 441.659 and replace it with ''services'' to eliminate confusion so that eligibility would be centered on categorical eligibility while service criteria were used for needs-based criteria.

*Response:* We are unable to make this requested revision, since needs-based criteria are necessary for eligibility, in addition to the other eligibility requirements specified in § 435.219 and § 436.219.

*Comment:* A couple of commenters requested that the regulation include an individual's inability to perform 2 or more ADLs or IADLs as a requirement for eligibility under section 1915(i) of the Act.

*Response:* This is not an eligibility requirement under the statute and we are not able to make this requested revision. While 1915(i)(1)(F)(i) requires that the independent assessment include an objective evaluation of an individual's inability or need for assistance to perform 2 or more ADLs, this is only a suggested element at 1915(i)(1)(D)(i) and thus, not required for an individual to be determined eligible for 1915(i) State plan HCBS.

*Comment:* One commenter requested that we add a provision to § 441.659(d)(3) to include consultation with the parents of a child.

*Response:* We believe that the broader term ''individual's authorized representative,'' used in 1915(i) of the Act and in this regulation, would include, in the case of a child, the child's parents or legal guardian, and does not need to be explicitly stated in regulation.

*Comment:* Another commenter recommended that when assessing the individual's support needs for purposes of evaluation of eligibility, that informal supports arranged by the individual not be considered unless the individual explicitly chooses to include them.

*Response:* This suggestion is already captured in § 441.720(a)(2) where the regulation requires the assessment to ''…include the opportunity for the individual to identify other persons to be consulted, such as, but not limited to, the individual's spouse, family,

guardian, and treating and consulting health and support professionals responsible for the individual's care.''

*Comment:* A couple of commenters stressed the importance that FFP be available for evaluations even when an individual is subsequently found ineligible for section 1915(i) of the Act services.

*Response:* As stated in section III.N.2.of the preamble to the proposed rule, FFP is available for evaluation and assessment as administration of the approved state plan prior to an individual's determination of eligibility for and receipt of other section 1915(i) of the Act services. If the individual is found not eligible for the State plan HCBS benefit, the state may claim the evaluation and assessment as administration, even though the individual would not be considered to have participated in the benefit for purposes of determining the annual number of individuals served by the benefit.

*Comment:* Some commenters requested clarification regarding level of need, as defined by the state and provider, including whether a state may leverage existing and/or specific instruments that are used to determine HCBS waiver eligibility in order to determine whether a beneficiary meets the State plan HCBS needs assessment criteria for participation, understanding that the State plan HCBS benefit eligibility criteria must be less stringent than that used for HCBS waiver programs.

*Response:* The state's process for determining eligibility must meet the requirements at § 441.715(d). We do not require a specific instrument(s) that states must use in meeting these requirements.

*Comment:* One commenter indicated that if states establish needs-based criteria for each specific service that an individual receives, it would add to the complexity of the assessment service planning, the overall costs of program administration, and potential beneficiary and family caregiver confusion. They stressed that such variability in Medicaid across states could become extremely difficult to track and monitor.

*Response:* As specified in the regulation, this is optional for states. This option could be of benefit for states that wish to include services for individuals with specific needs within a section 1915(i) of the Act benefit that is not targeted to a specific population group(s) and is designed to provide a broad array of services.

*Comment:* One commenter requested CMS require states to make needs-based criteria publicly available, including public Web site posting. Another inquired how CMS will maintain publicly available documents relating to the state's modification proposal, approval and denial letters, comments submitted and communications with the state.

*Response:* We agree that web posting is an ideal way to make state plans and amendments available to the public, and we are building a web-based information system for all of Medicaid and CHIP that will provide immediate access to state plan amendments. Section 1915(i) of the Act SPAs will be part of that system. Until then, SPAs are processed on paper and posted sometime after approval. We encourage states to provide for effective public engagement in all of their Medicaid program activities, and states are required to provide 60 day public notice when states change reimbursement methodology or revise CMS approved section 1915(i) needs-based criteria.

7. Independent Assessment (§ 441.720) (Proposed § 441.662)

Section 1915(i)(1)(E) of the Act describes the relationship of several required functions. Section 1915(i)(1)(E)(i) of the Act refers to the independent evaluation of eligibility in section 1915(i)(1)(A) and (B) of the Act, emphasizing the independence requirement. Section 1915(i)(1)(E)(ii) of the Act introduces the requirement of an independent assessment following the independent evaluation. Thus, there are two steps to the process: The eligibility determination, which requires the application of the needs-based criteria and any additional targeting criteria the state elects to require; and the assessment for individuals who were determined to be eligible under the first step, to determine specific needed services and supports. The assessment also applies the needs-based criteria for each service (if the state has adopted such criteria). Like the eligibility evaluation, the independent assessment is based on the individual's needs and strengths. The Act requires that both physical and mental needs and strengths are assessed. We note that while section 1915(i)(1)(F)(i) of the Act requires that the independent assessment include an objective evaluation of an individual's inability or need for assistance to perform 2 or more ADLs, this is only a suggested element at section 1915(i)(1)(D)(i) of the Act and thus, not required for an individual to be determined eligible for 1915(i) State plan HCBS.

These requirements describe a person-centered assessment including behavioral health, which will take into account the individual's total support needs as well as the need for the HCBS to be offered. Section 1915(i)(1)(E)(ii) of the Act requires that states use the assessment to: determine the necessary level of services and supports to be provided; prevent the provision of unnecessary or inappropriate care; and establish a written individualized service plan.

To achieve the three purposes of the assessment listed above, the assessor must be independent; that is, free from conflict of interest with regard to providers, to the individual and related parties, and to budgetary concerns. Therefore, we proposed specific requirements for independence of the assessor in accordance with section 1915(i)(1)(H)(ii) of the Act, and we will apply these also to the evaluator and the person involved with developing the person-centered service plan, where the effects of conflict of interest would be equally deleterious. These considerations of independence inform the discussion below under section 1915(i)(1)(H)(ii) of the Act regarding conflict of interest standards.

*Comment:* Many commenters expressed support of the independent assessment requirements in this section of the rule. One commenter who expressed agreement with § 441.662(a)(1), stated that individuals with disabilities have a right to choose their own lifestyle, just like their peers without disabilities.

*Response:* We appreciate these comments and support.

*Comment:* One commenter stated that clear assessment standards are necessary to ensure that individuals deemed eligible for section 1915(i) of the Act services receive the services that are most appropriate and effective.

*Response:* We agree and have specified these requirements in § 441.720.

*Comment:* A commenter requested that we ensure there are assessments of need for individuals residing in facility-based settings before the development of their person-centered service plans.

*Response:* The requirements of this regulation pertain to all section 1915(i) of the Act eligible and enrolled individuals residing in home and community-based settings, regardless of the setting.

*Comment:* One commenter stated concern that § 441.662(a)(1)(i)(A) refers to ''health care professionals,'' given that often assessments of support needs—such as the Supports Intensity Scale and functional-behavioral needs assessments—are made by case

managers or social workers, rather than health care professionals.

*Response:* As enrolled Medicaid providers of Medicaid services or administrative activities, case managers and social workers are included in our regulation as ''health care professionals.''

*Comment:* A couple of commenters requested that CMS add to paragraph (a)(2) ''friends'' as respondents that the individual may identify to participate in the assessment. They also commented that this paragraph should require that the assessor actually contact and involve individuals identified.

*Response:* We do not believe it is necessary to add an exhaustive list of all the examples of the persons that an individual participant may choose to include in this process. The requirement specifies a few examples but emphasizes that these are just examples and not a limitation.

*Comment:* A couple of commenters requested clarification in § 441.662 (a)(4) on the requirements for a caregiver assessment, including what it means, the process, and purpose. Another commenter suggested its removal, stating that it unnecessary since there is already an assurance elsewhere in the regulations that states must assure the enrollees' health and welfare. However, many others expressed their support of this provision and stressed the importance of its inclusion in the regulation; some even urged CMS to include this under other Medicaid HCBS authorities. One of these commenters requested the addition that the caregiver assessment will assess the training, support and respite needs and identifying options for receiving these services. Another stated that the assessment should evaluate the caregiver's well-being, needs, strengths and preferences, as well as the consequences of caregiving on the caregivers.

*Response:* We included this provision in the proposed rule as a result of comments received in response to the first proposed rule pertaining to section 1915(i) of the Act, which was not finalized. Those commenters stated that taking into account the capacity of primary caregivers to provide for the individual's assessed needs is necessary, and some stated that natural supports often have declining capacity, and to fail to take this into account leads to unrealistic plans. We agree that when caregivers are being relied upon to implement the person-centered service plan, it is important that a caregiver assessment be required in order to acknowledge and support the needs of informal family caregivers. We agree that caregivers provide critical care and support that enables individuals to live in their homes and communities. When there is a caregiver involved, an assessment of the caregiver's needs is essential to facilitate the individual's linkage to needed supports. We appreciate the comments regarding definition and process, which we will consider for future guidance.

*Comment:* Many commenters requested that CMS add language to the rule that specifically addresses assessment of needs related to cognitive impairment. A couple of commenters noted that this is needed to promote early diagnosis of memory problems and prevent the cycle of under-diagnosis and misdiagnosis of Alzheimer's disease. They stated that many individuals with dementia need supervision and cueing or are unable to perform instrumental activities of daily living. Others expressed support of a more comprehensive approach to include social, medical, behavioral, emotional, physical and cognitive strengths and challenges, and also noted that on-going training and coaching in understanding cognitive and behavioral issues unique to brain injury in the planning process should be a part of the delivery system. They stated that CMS and states will need to work with program participants and community advocates to determine the appropriate depth of assessment, allowing for an informed planning process while also being respectful of some individuals' desire for a non-intrusive approach. They also noted that a range of professionals may be suitable for assessing cognitive as well as behavioral issues, including neuropsychologists, psychologists trained in brain injury, educators, and speech and language therapists.

*Response:* We agree with these comments and have added ''cognitive'' to § 441.720(a)(4).

*Comment:* One commenter expressed support of the requirement for a person-centered assessment process.

*Response:* We agree that this is essential to the assessment and person-centered service planning process.

*Comment:* One commenter stated that it would be helpful for providers and practitioners to have a degree of flexibility in prioritization and to override recommendations for lower levels of care. They noted that this could be kept at a particular level (that is, no more than 5 percent of the time), but there are certain conditions and situations that can result in skewed assessment results.

*Response:* We do not agree with this comment. We do not believe it would be consistent with the intent of this sub-section, or with the person-centered process requirements at § 441.725, and would enhance the potential for conflict of interest.

*Comment:* A few commented on the statutory requirement regarding assessment of an individual's inability to perform two or more ADLs. One suggested that the assessor also consider cueing as assistance, whether by someone, a device or service animal in addition to individual assistance or assistive technology. Another stated that the statute does not set any specific needs-based or ADL criteria as a standard for eligibility for any HCBS, and that CMS should clarify that states should not interpret the two ADLs evaluation criteria in the assessment to mean that two ADLs is the standard for eligibility for the state plan option or for any specific services under the state plan option. One commenter recommended that CMS clarify in the preamble that while ADL review is a required element of the assessment, the result of the ADL review cannot be a litmus test for access to services.

*Response:* An objective evaluation of the individual's inability to perform two or more ADLs is, in statute, a required element of the independent assessment but it is only a permissible element of the independent eligibility evaluation. The statute does not specify that eligibility for state plan HCBS must be based on the evaluation of the individual's inability to perform a minimum number of ADLs. We concluded that partial or complete inability to perform two or more ADLs is not a statutory prerequisite to eligibility for State plan HCBS. However, the evaluation of an individual's inability to perform two or more ADLs, as required under section 1915(i)(1)(F)(i) of the Act, is related to the state's responsibility under section 1915(i)(1)(E)(ii) of the Act to use the results of the assessment to determine a necessary level of services and supports, prevent the provision of unnecessary or inappropriate care, and establish an individualized care plan.

*Comment:* Some commenters recommended that in-person assessments be required or, alternatively, that telemedicine assessments be allowed only in very limited circumstances when in-person assessments cannot practically be performed. Other commenters agreed that it may be appropriate to use technology to conduct assessments in certain circumstances, such as for individuals in rural or underserved areas, but not for beneficiaries for whom such circumstances do not create

barriers to an in-person and in-home assessment. They suggested additional language to limit use of technology to conduct assessments to individuals in rural areas, or other special circumstances by requiring states to make an individualized determination of the need for substituting telemedicine for genuinely in-person assessments. One commenter stated that it should only be allowed if the state makes an individualized determination of the need for substituting telemedicine for genuinely in-person assessments. Another stated that assistive technology or other alternative or augmentative communication should be made available for those who would benefit from it. A few commenters stated that § 441.662(a)(1)(i)(B) should include, if the individual wishes, the presence of family, a peer/parent support provider, or other people of the individual's choice.

*Response:* In our preamble to the proposed rule, we indicated that we added this provision of the regulation in recognition that many states are developing infrastructure and policies to support the use of telemedicine and other ways to provide distance-care to individuals in order to increase access to services in rural areas or other locations with a shortage of providers. However, we are concerned that by limiting this technology to only these circumstances, the regulation may end up precluding instances where it may be useful, maybe even essential. Therefore, we are not adding this limitation to the regulation, but will include this example in future guidance and monitor its use by states. We also note that these requirements do not override the other requirements for the assessment in this section, including the person-centered process and consultation with persons that the individuals choose to include.

*Comment:* A couple of commenters stated that § 441.662(a)(7) regarding habilitation services specifies that only Section 110 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Improvement Act of 2004 are primary payors and that (a)(8) should require documentation indicating that State plan HCBS also available through other Medicaid services or other federally funded programs, will not be provided:

''No State plan HCBS are provided which would otherwise be available in the same amount, scope, and duration to the individual through other Medicaid services or other federally funded programs available under Section 110 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Improvement Act of 2004.''

*Response:* We do not agree with this suggested addition. The broader requirement of this provision ensures that if the same services are available through other sources, then State plan HCBS would not be provided. Adding the suggested clause would leave the possibility for a state to claim FFP for a service through section 1915(i) of the Act before or instead of claiming it through these other authorities/programs. Since the intent of this provision is to ensure that states only claim for State plan HCBS when they are unavailable through other sources, we are unable to incorporate the language requested.

*Comment:* A couple of commenters recommended adding a modification so that § 441.662(a)(8) would require that the services be ''immediately'' available to the individual.

Some commenters stated concern that a state might deny an individual's ability to choose to receive a service through the section 1915(i) of the Act benefit, if that service would be theoretically available under another federal program but the fact that the individual was not provided with assistance in applying for those services would result in delayed access to services or no access to services. They instead proposed a ''no wrong door'' policy in enrolling individuals in the section 1915(i) of the Act State plan benefit, so that regardless of their eligibility status for services under other programs the individual begins receiving the services they are determined to need through their individualized assessment without having to apply or complete additional eligibility determinations. They also stated that individuals should be able to utilize the program that best meets their needs and preferences, and provides for the greatest degree of service coordination and administrative simplification.

*Response:* We developed the requirements at § 441.720(a)(7) and (8) due to concern over duplication of habilitation services and other state-defined services. Additionally, since some individuals may be simultaneously receiving services through a HCBS waiver and the section 1915(i) benefit, we require in § 441.720(a)(9) documentation that the services provided through section 1915(c) and section 1915(i) of the Act authorities are not duplicative for the same individual. This will also include coordination of assessments, person-centered service plan development, and case-management to ensure that individuals receiving services under both authorities are not subject to multiple assessments and person-centered service plans. We believe the term ''available,'' addresses the concern and revision is unnecessary.

*Comment:* A commenter asked whether individuals would be required to utilize the State plan HCBS benefit first, when those services are duplicative of services also offered under a HCBS waiver for which that individual is eligible, such as habilitation services.

*Response:* The determination of how such services would be provided must be made during the development of the person-centered service plan. Additionally, if the State plan HCBS will provide the same amount, duration, and scope of service as another covered Medicaid service, states must explain in their proposed SPA how they will ensure against duplication of service and payment.

*Comment:* Several commenters expressed support of the requirement for the assessment to be conducted ''in consultation with the individual, and if applicable, the individual's authorized representative, and include the opportunity for the individual to identify other persons to be consulted, such as, but not limited to, the individual's spouse, family, guardian, and treating and consulting health and support professionals responsible for the individual's care.'' However, one of these commenters stated this language stops short from stating that the participant has a role in deciding who participates in the assessment process, indicating that person-centered practices require that participants drive the assessment process, and this includes decisions pertaining to who is part of their team when identifying and addressing unmet need.

*Response:* We believe this concern is fully addressed in the section pertaining to the person-centered planning process at § 441.725(a), and we have added a cross reference to this section to § 441.720(a)(1).

*Comment:* A commenter asked whether states can set limits on amount/scope/duration of State plan HCBS benefits, as approved via the State plan amendment process.

*Response:* Yes. Section 441.700 specifies that states are to describe the services that they will cover under the State plan HCBS benefit, including any limitations of the services.

*Comment:* One commenter expressed that states should have flexibility in choosing the independent assessor to serve populations.

*Response:* States have the flexibility to determine the entity that can perform this function, consistent with the

requirements at § 441.730 regarding qualifications and § 441.720 regarding the independent assessment.

*Comment:* One commenter noted that they have seen great variability in assessment results for the same individual depending on what incentives staff have for scoring a child or adult into or out of particular specialty services. They expressed that it needs to be clear which care provider or entity is responsible for completion of assessment for a particular patient and, if there are competing assessment results, which provider's or entity's assessment is prioritized.

*Response:* We agree, which is why we emphasized the section 1915(i) of the Act requirement for conflict of interest standards at § 441.730(b). When a state proposes a SPA to add section 1915(i) of the Act HCBS, we require that the state specify the entity that will be responsible for the assessment, the qualifications of that entity, and how the state will meet the conflict of interest requirements at § 441.730(b). The commenter mentions the presence of multiple assessments with competing assessment results, so we further note that there should be one assessment that incorporates the findings of any other records or information needed to develop the person-centered service plan as required in § 441.725.

*Comment:* One commenter asked that § 441.662(a)(2) also require that the assessor actually contact and involve the individuals identified.

*Response:* Section 441.720 (a)(1) requires the assessment to be a face-to-face contact with the individual and to be a person-centered process.

*Comment:* One commenter stated that it will be important for CMS and states to incorporate core elements of assessment that inform the participant direction process and at minimum, are not in conflict with participant-directed processes. They also stated that assessment questions should not lead to premature assumptions pertaining to who is appropriate for participant-direction simply based on diagnosis, the availability of informal caregivers, the individual's functional need, or cognitive status. Instead, assessment questions should be built on an assumption that all individuals, with the appropriate level of support, can participate in some form of participant direction. Assessment questions should assist the participant and others involved in the assessment process to identify unmet needs and the type of support that may be beneficial to the individual to allow for successful participant direction. In addition to identifying unmet need (as defined by the individual), this could include an assessment of strengths, abilities, individual goals, need for a representative, capacity to self-direct with an eye for developing a support system to ensure success in self-directing, and risks. For a participant direction assessment to be successfully integrated into a larger assessment process, those performing the assessment need to be well-informed of participant direction programs, benefits, and requirements. Those performing and overseeing assessment processes also need training on the difference between traditional and participant-directed paradigms of service delivery. State and local leaders need to be informed, as well as educate their program staff, of the core competencies required to effectively support people to self-direct.

*Response:* We appreciate these comments and will consider them in future guidance that we develop after final publication of this rule.

*Comment:* One commenter recommended that the requirement to use a ''person-centered process'' in § 441.662(a) cross reference § 441.665, and suggests the phrase ''. . . and meeting the requirements of § 441.665'' be added to the end of § 441.662(a).

*Response:* We agree with this recommendation and have added ''that meets the requirements at § 441.725(a)'' to § 441.720(a)(1).

*Comment:* A couple of commenters requested clarification of the relationship between the needs-based criteria that states must establish for determining eligibility for HCBS, and for each specific service. One of these commenters noted that § 441.662(a)(5) implies that need-based criteria must be in place for each service and suggested moving the term ''(if any)'' to after the word ''criteria,'' and editing it to ''(if any have been established)''.

*Response:* We agree with this suggestion and have revised the first sentence of § 441.720(a)(5).

*Comment:* One commenter stated that clarification is needed regarding the independent assessment that is conducted by a qualified health care professional (suggesting a medical model approach), and a true person-centered planning process.

*Response:* We acknowledge that this term used in this paragraph is inconsistent with other language in this regulation, and have revised § 441.720(a)(1)(i)(A) accordingly.

*Comment:* A commenter recommended that in § 441.662(a)(6) CMS create a stronger regulation to promote self-direction of services, and recommended the term ''any information'' be modified to ''notice, all information, and any supports.''

*Response:* We did not make the changes requested by this commenter. This paragraph pertains to what must be included in the assessment with regards to self-direction if the State offers this under the State plan HCBS benefit. Other requirements regarding self-direction of services are contained in § 441.740.

*Comment:* Several commenters had opinions on the frequency requirements of the assessment. One requested that CMS expand this to ''at the request of the individual,'' as is similarly provided in the regulation at § 441.665(c). Another stated that the assessment should be required every 3 years if clients are stable and engaged in the community, to reduce stress on the case management system. A couple of others just stated that re-assessments should occur ''frequently'' and when an individual's support needs or circumstances change significantly. Some stressed that the assessment and re-assessment process should be based primarily on individual need, and not place burdensome processes on the individual. One stated that for individuals unable to communicate via spoken, signed, written, or alternative/augmentative communication, the regulations should include language that significant changes in behavior and/or temperament indicate a need for reassessment of services. And another stated that CMS should clarify that the requirement for reassessment should not be interpreted to mean that each individual requires a full-scale medical re-evaluation, but instead re-assessment of services currently being used and new services requested by the individual or those important to him or her. One commenter asked how frequently the assessment must be made if the individual's condition is one that is not likely to improve.

*Response:* The current regulation language states ''the re-assessment of needs must be conducted at least every 12 months and as needed when the individual's support needs or circumstances change significantly, in order to revise the person-centered service plan.'' We believe that this language captures some of the concerns noted by the commenters. For others, in order to accommodate the varying and sometimes opposing comments, we believe that we should not change this requirement as provided in the proposed rule. This minimum frequency is consistent with the minimum frequency requirement for the review of the person-centered service plan, which

is based on the statute at section 1915(i)(1)(G)(ii)(III) of the Act.

*Comment:* Several commenters noted language from the preamble of the proposed rule that indicates that an assessment of ''needs and strengths'' is more appropriate than needs and capabilities, as the words capability and ability are historically connected with a deficit oriented approach to assessment. They requested that CMS add the word ''strengths'' to § 441.662(a). Some also requested that the reference to needs in § 441.662(a) specifically include physical and mental health needs stating that it must be made clear in the opening paragraph of this sub-section that these must also be assessed in order to establish a service plan.

*Response:* While we agree that these are elements that must be included in the assessment process, we believe this is already captured sufficiently under § 441.720 (a)(4) of this section which states, ''Include in the assessment the individual's physical, cognitive, and behavioral health care and support needs, strengths and preferences, . . .'' Therefore, we have not adopted this change as requested.

*Comment:* Several commenters stated the regulation text should also include the language from the preamble that indicates that services must be furnished to individuals with an assessed need, and must not be based on available funds.

*Response:* This was an explanatory statement of the requirement at § 441.677(a)(1)(ii) of the proposed rule, which is now at § 441.745 (a)(1)(ii) of the final rule, and is not necessary to specifically state in regulation.

*Comment:* Several expressed that the regulation should include language from the preamble that states the ''role of the assessor is to facilitate free communication from persons relevant to the support needs of the individual.''

*Response:* This is an explanatory statement in the preamble of the requirement already included at § 441.720(a)(2) regarding consultation with the individual and if applicable, the individual's authorized representative, and others that the individual would like to include. We will plan to include this explanation in future guidance.

8. Person-Centered Service Plan (§ 441.725) (Proposed § 441.665)

Section 1915(i)(1)(G) of the Act requires that the State plan HCBS benefit be furnished under an individualized care plan based on the assessment. The terms ''care plan'' and ''service plan'' are used interchangeably in practice. As explained in the May 3, 2012 proposed rule (77 FR 2012–10385), we have adopted the term ''person-centered service plan'' in this regulation. To fully meet individual needs and ensure meaningful access to their surrounding community, systems that deliver HCBS must be based upon a strong foundation of person-centered planning and approaches to service delivery. Thus, we proposed to require such a process be used in the development of the individualized person-centered service plan for all individuals to be served by section 1915(i) of the Act benefit. We proposed certain requirements for developing the person-centered service plan, but noted that the degree to which the process achieves the goal of person-centeredness can only be known with appropriate quality monitoring by the state, which should include substantial feedback provided by individuals who received or are receiving services.

a. Person-Centered Planning Process § 441.725(a)

*Comment:* One commenter requested that CMS ensure that there is a plan in place and implemented for more than medication management for individuals residing in facility-based settings.

*Response:* The requirements of this regulation pertain to all section 1915(i) of the Act eligible and enrolled individuals residing in home and community-based settings, regardless of the setting.

*Comment:* One commenter states that the driver and focus of the person-centered planning process is the individual and this concept is presented in § 441.665. However, it is not referenced at all in the provisions of § 441.659 pertaining to needs-based criteria and evaluation, nor in the provisions of § 441.662 related to independent assessment.

*Response:* The needs-based criteria established by each state determine an individual's eligibility through an independent assessment and evaluation, which by its nature, focuses on the person. The individual does not drive or control these processes; however, the individual is the center of this process. The regulation at § 441.720(a)(1), regarding independent assessment, references § 441.725, person-centered service plan.

*Comment:* One commenter supports the expectation that states support individuals in the planning process as well as monitor the person-centeredness of the process itself. The commenter requests further refinement of the rule to ensure that program participants and community stakeholders are actively engaged in the states' design of the program as well as its ongoing quality management structure so that person-centered processes can be designed and monitored with substantial involvement of stakeholders. The commenter is also pleased to see that as part of the service planning process, program participants (including those not self-directing) will be offered choices pertaining to the services and supports they receive. The commenter requests that specific examples or guidelines be offered to states to demonstrate what this choice may look like within traditional services.

*Response:* We agree with the commenter's suggestion and will take it into consideration in developing future guidance.

*Comment:* Some commenters stated that it is important that the regulation include the statement in the preamble that indicates that the service plan ''should be constructed in a manner that promotes service delivery and independent living in the most integrated setting possible.''

*Response:* It is our expectation that the person-centered process incorporate the ideals stated in the preamble and we believe that this expectation is expressed in the regulation text at § 441.725(b)(1).

*Comment:* A few commenters recommended the following revision to § 441.665(a)(1), ''Includes people chosen by the individual, including a parent and a parent support provider in case of a child and a youth support provider when the individual is under the age of 25.'' A few commenters recommended the person-centered planning process allow HCBS providers and other health care providers to participate in service plan development and/or be the service plan developer.

*Response:* We appreciate the commenters' perspective and suggestions. We do not want to prescribe all people who may be included in the planning process since that action may unintentionally exclude someone who is chosen by the individual.

*Comment:* Several commenters recommended that § 441.665(a) address those individuals not able to indicate a choice of whom they would like to participate in the person-centered planning process and that in these instances, the process should allow inclusion of people who know and care about the individual. One commenter encourages CMS to note the potential role of family members, peers, providers, and others during the person-centered service planning for HCBS. One commenter recommended that individuals who require assistance in

making decisions due to profound cognitive limitations may need the protection of legally-appointed guardianship arrangements, preferably by a family member or another individual who is familiar with an individual's unique needs. In many instances, it will not be feasible for service planning for individuals with brain injury to be furnished by any other individual or entity. One commenter encourages the use of advance directives to assure that a person's wishes are clear in the event he/she needs assistance, but is unable to otherwise express himself/herself.

*Response:* We believe that the regulation text as proposed, and which we are finalizing at § 441.725(a)(1), encompasses the suggestions that the commenter proposes.

*Comment:* A few commenters recommended that § 441.665(a) of the proposed rule should also require that person-centered service plans include examples and language referring to positive strategies to minimize the use of all types of restraints (chemical, physical, and mechanical) and other restrictive procedures.

*Response:* We have strengthened the language of this section in the final rule at § 441.725(b)(13) by indicating that any modification of the additional conditions must be justified in the person-centered service plan and added specific requirements about what must be documented in the person-centered service plan in these instances.

*Comment:* Several commenters recommend the following revision to § 441.665(a)(2), ''Provides necessary information, support and experiences, if needed, to ensure that the individual directs the process to the maximum extent possible, and is provided meaningful opportunity to make informed choices and decisions.'' One commenter requested that the regulation more clearly state that an individual must be given information about all available supports and services.

*Response:* We believe that the regulation text at § 441.725(a)(2) is complete and clear.

*Comment:* A commenter suggested that the regulation must more clearly state that an individual must be given information about all available supports and services. The commenter also states that the individual must be given complete and accurate information about his/her right to a fair hearing and the regulation should require that this information be provided at every person-centered planning meeting and that a simple easy to use form be provided to request a fair hearing.

*Response:* It is our expectation that during the person-centered planning process and development of the person-centered service plan, all services and support options available will be articulated and discussed with the individual. States must adhere to the fair hearing requirements at part 431, subpart E for all Medicaid programs.

*Comment:* A few commenters recommended modifying § 441.665(a)(3) to read, ''Is timely, flexible, and occurs at times and locations of convenience to the individual.'' One commenter requested clarification regarding the standard against which a state's ''person-centered'' process will be reviewed or the timeline for development of those criteria.

*Response:* We believe that the requirement regarding scheduling the meeting at the convenience of the individual addresses the flexibility issue and are not incorporating the suggested language. The minimum standards for person centered planning are enumerated in the regulation.

*Comment:* Many commenters recommended that the language in the regulation text at § 441.665(a)(4) be revised to include physical, linguistic and cultural accessibility in the person-centered planning process. One commenter requested that cultural considerations be expanded to include ''lifestyle'' choices of the individual.

*Response:* We appreciate the commenters' suggestions and note that the regulation text at § 441.665(a)(4) addresses cultural considerations. We have added regulation text at § 441.725(a)(4) to specify that the person-centered planning process must be accessible to persons who are limited English proficient and persons with disabilities, consistent with the Medicaid programmatic accessibility provision at § 435.905(b). Policy guidance to promote compliance with Title VI's prohibition against national origin discrimination affecting persons with limited English proficiency is available on the Department of Health and Human Services Office for Civil Rights Web site at *http://www.hhs.gov/ocr/civilrights/resources/laws/revisedlep.html*.

*Comment:* Several commenters suggest inserting language at § 441.665(a)(2) such as meaningful choice, informed decision-making, provision of meaningful information about settings, including the most integrated setting alternatives appropriate for that individual.

*Response:* We appreciate the commenters' suggestions. While we have not made any revisions to § 441.725(a)(2), we have considered these comments for other revisions made to the regulation.

*Comment:* Many commenters agreed with the provision at § 441.665(b)(1) that the person-centered plan should record the alternative home and community-based settings that were considered by the individual. Another commenter requested CMS add a requirement that ''all residents have selected this setting from a meaningful choice of alternatives, including the most integrated setting appropriate for each resident.'' One commenter requests with respect to § 441.665(a)(8), that this provision should be modified to read, ''Documents how the home and community-based settings, services and supports, including both residential and employment settings and supports, are in line with the USDOJ most integrated setting mandate under the ADA and *Olmstead* decision, and in cases where settings and services are not fully aligned with the 'most integrated setting' mandate, provides full documentation regarding why less integrated/congregate settings and services are being utilized.''

*Response:* We appreciate the commenters' support. We have addressed the concern regarding meaningful choice and most integrated settings by clarifying that the individual's selection must include non-disability specific housing opportunities. We support the mandates of the ADA and the *Olmstead* decision and believe the final regulation reflects the spirit of these mandates.

*Comment:* A commenter supports the expectation that states support individuals in the planning process as well as monitoring the person-centeredness of the process itself. The commenter requests further refinement of the rule to ensure that program participants and community stakeholders are actively engaged in the states' design of the program as well as its ongoing quality management structure so that person-centered processes can be designed and monitored with substantial involvement of stakeholders. The commenter is also pleased to see that as part of the service planning process, program participants (including those not self-directing) will be offered choices pertaining to the services and supports they receive. The commenter requests that specific examples or guidelines be offered to states to demonstrate what this choice may look like within traditional services.

*Response:* We appreciate the support. States are provided the latitude to determine how they will operationalize

the regulation. We do not wish to be as prescriptive as suggested.

*Comment:* A few commenters recommended that CMS require any modifications to the conditions placed upon provider-controlled or owned residential settings be supported by a specific assessed need documented in the person's person-centered plan. One commenter stated that they did not support unnecessarily restrictive methods for providing person-centered services and supports even though they may be well-meaning.

*Response:* We agree with the commenters' statements and have strengthened the language of this section in the final rule by requiring at § 441.725(b)(13) that any modification of the additional conditions must be justified in the person-centered service plan. We also added specific requirements about what must be documented in the person-centered service plan in these instances.

*Comment:* One commenter suggested that CMS make the person-centered process the critical identification for what is determined to be community-based not where the site is located or what it looks like. Another commenter states that the person-centered planning meeting should be where the needs and preferences are matched with compatible and appropriate services/living arrangements and where modifications to existing services and acceptable compromises are determined. They state that maintaining a full continuum of services and settings is a better plan than limiting options or making them harder to access because some people might find them objectionable. One commenter states that specific restrictions on living arrangements should not supersede supports and services identified through the person-centered planning process.

*Response:* We believe that our regulations need to address the issue of what constitutes home and community-based settings. While the person-centered service plan can and does assist individuals with integration into the community, it is not the vehicle to determine whether a setting meets the requirements for being home and community-based.

*Comment:* One commenter requested deletion of the requirement that services be based on the needs of the individual as indicated in their person-centered service plan, stating that these plans are often limited by the experience of the individuals developing them and the most effective treatments/supports may not always be included. The commenter noted that service needs and ideas for how best to offer them evolve, particularly as a person progresses and service plans often become stale before they are reviewed/updated.

*Response:* We do not agree with removing this requirement, and note that it is based on statute at section 1915(i)(1)(G) of the Act. States are responsible for determining that requirements related to the qualifications of the entities who will conduct the assessments and the person-centered planning process have been met. It is expected that the providers would have adequate training to perform the function consistent with the requirements set forth in the regulation. States must ensure the person-centered service plan process is timely and includes a method for the individual to request updates to the plan. Additionally, an assessment of need must be conducted when the individual's support needs or circumstances change significantly and revisions to the person centered services plan are necessary.

*Comment:* Many commenters recommend deletion of the language that says the requirements are ''based on the needs of the individual as indicated in their person-centered service plan.'' The commenters believe that without deletion or modification of the proposed language, it would be too easy for a provider to insert certain language in a service plan.

*Response:* The person centered planning process includes provisions to protect a person-centered service plan from being changed without the individual's consent. We believe the inclusion of this language is a necessary beneficiary protection; therefore we did not revise the regulation to remove this requirement.

b. Person-Centered Service Plan § 441.725(b)

*Comment:* One commenter states that if CMS defines what a service plan should be, it may be in direct conflict with how states define their services and the commenter does not believe that this is the intent of CMS.

*Response:* We do not define specific services. However, we do define what should be included in the person-centered service plan, and by adopting the terminology and process of a person-centered service plan, the services and supports should reflect the individuals preferences based on their needs.

*Comment:* One commenter recommended, for high-need children and older adult beneficiaries, the option of further assessment and recommends that there be allowable reimbursement for these activities necessary for developing the service plan, including communication with collateral treatment partners (that is, pediatrician, teacher, school representative, parent) as these partners and activities are critical for development of a service plan for vulnerable beneficiaries and are absolutely essential for proper care for children and for seniors.

*Response:* States may be able to claim reimbursement for assessment activity, as well as person-centered service plan development, as a Medicaid administrative activity that is in accordance with an approved cost allocation plan.

*Comment:* One commenter recommended enhancing regulation language to ensure that states have the flexibility to include services and supports that are appropriate and essential for child and youth development, but may not be Medicaid reimbursable, including education, housing, and transportation, as to encompass a comprehensive service provision supported by HCBS.

*Response:* We believe the language in § 441.725(b)(5) of the final rule supports this concept: ''the plan must . . . reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports.''

*Comment:* Commenters supported § 441.665(b) and suggested that equal emphasis be placed on what is important for the individual and what is important to the individual. One commenter recommended the following, ''The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, and what is important to the individual with regard to preferences for the delivery of such services and supports, including, but not limited to, living arrangement, neighborhood, leisure activities, and relationships.''

*Response:* We appreciate the commenters' support. As the language of the proposed rule supports this concept, we do not believe that the suggested revisions for the final rule at § 441.725(b) are necessary.

*Comment:* Many commenters stated their support of person-centered planning and expressed that when the individual welcomes the involvement of family or other informal caregivers, family members should be engaged as part of the care planning and care-giving teams. They stated that services to be provided by family caregivers should only be included in the person-and family-centered plan if they have agreed to provide these services and feel

prepared to carry out the actual tasks. One commenter agreed with preamble language that the service plan should neither duplicate, nor compel, natural supports, expressing that unpaid supports should be provided voluntarily. This commenter suggested that CMS include this specific language in the regulation text.

*Response:* We appreciate the support of the commenters. The language in § 441.725(b)(5) of this final rule states: ''Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of State plan HCBS.''

*Comment:* One commenter supported requirements for the development of a person-centered plan but recommends that § 441.665(b)(9) should clarify that even though the service plan is ''finalized and agreed to in writing by the individual'' the individual retains the right to appeal a denial, reduction, suspension, or termination of a service described in part 431, subpart E.

*Response:* As the fair hearing requirements at part 431, subpart E, apply to all Medicaid services, it is not necessary to revise the text of the regulation at § 441.725.

*Comment:* Some commenters recommended that each person-centered service plan include the dollar figures of the budget allocations provided to each beneficiary, the starting date of services/supports, the scope and duration of service, and all other services that are not Medicaid reimbursable.

*Response:* We agree that the person centered service plan should be comprehensive and the language in the final rule supports this concept.

*Comment:* Two commenters were against requiring the signatures of all individuals and providers responsible for implementation of the service plan, stating that this is impractical and will make the process untenable. They also expressed that giving all providers the entire service plan would share personal health information of the member with providers who do not necessarily need to see that information. One commenter was concerned about liability and who is responsible if an individual has risky behavior.

*Response:* The regulation language at § 441.725(b) gives the flexibility for the individual to determine to whom the plan will be provided, in whole or in part, commensurate with the level of need of the individual and the scope of the services and supports available. Sharing of this information must be consistent with federal and state laws regarding privacy and confidentiality.

*Comment:* Several commenters recommended the following revisions for § 441.665(c): ''The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required in § 441.662 of this subpart, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual, an authorized representative, or healthcare or support providers.'' One of these commenters stated that while having a service plan required every 12 months may be minimally okay for some populations, it is insufficient (too lengthy) for those with chronic mental health and substance use disorders. Another commenter stated that, at a minimum, requiring service plan review every 6 months is adequate. Another commenter stated that the reassessment being done ''at the request of the individual'' could lead to inflated service hours and costs, both of which will add unnecessary costs to the provision of HCBS. This commenter believed the language at § 441.662(b) is better language. Another commenter was against requiring assessments before the meeting.

*Response:* We proposed 12 months as the minimum time period for an individual's person-centered service plan to be reviewed and revised. We agree and support reviews and revisions of an individual's person-centered service plan more frequently as needed. The person-centered service plan should be reviewed and revised when the individual's circumstances or needs change significantly and at the request of the individual, authorized representative or healthcare provider.

*Comment:* One commenter did not support standardized functional assessment. In addition, the commenter stated that when service providers use a functional assessment, it has been typically to establish funding levels, which should only be determined by a person-centered planning process and allowing such an instrument to overrule the person-centered plan completely negates the person-centered planning process.

*Response:* An individual's person-centered plan must be based on that individual's assessment of functional need. We have not specified the instruments or techniques that should be used to secure the information necessary to determine an individual's functional need, person-centered service plan, or service budget. States do have the ability to establish limits on amount, duration, and scope of services.

*Comment:* With respect to § 441.665(b)(6), one commenter stated that individual back-up plans have been a critical component of participant direction. A commenter suggested when refining the proposed language, it will be important to reflect on the impact the traditional paradigm has on the role providers and participants play in defining, identifying, and addressing risk.

*Response:* We have strengthened the language in the final rule to ensure that reducing risk for individuals receiving Medicaid HCBS does not involve abridgement of their independence, freedom, and choice. Restricting independence or access to resources is appropriate only to reduce specific risks, and only when considered carefully and reflected in the person-centered service plan.

9. Provider Qualifications (§ 441.730) (Proposed § 441.668)

In the proposed rule, we proposed to require states to provide assurance that necessary safeguards have been taken to protect the health and welfare of the enrollees in State plan HCBS by provision of adequate standards for all types of providers of HCBS. States must define qualifications for providers of HCBS, and for those persons who conduct the independent evaluation of eligibility for State plan HCBS and independent assessment of need, and who are involved with developing the person-centered service plan. We noted that we will refer to the individuals and entities involved with determining access to care as ''agents'' to distinguish this role from providers of services. We also noted that the proposal in no way preempts broad Medicaid requirements, such as an individual's right to obtain services from any willing and qualified provider of a service.

We believe that these qualifications are important safeguards for individuals enrolled in the State plan HCBS benefit and proposed that they be required whether activities of the agents are provided as an administrative activity or whether some of the activities are provided as a Medicaid service. At a minimum, these qualifications include conflict of interest standards, and for providers of assessment and person-centered service plan development, these qualifications must include training in assessment of individuals whose physical or mental condition may trigger a need for HCBS and supports, and an ongoing knowledge of current best practices to improve health and quality of life outcomes.

The minimum conflict of interest standards we proposed to require would ensure that the agent is not a relative of the individual or responsible for the individual's finances or health-related decisions. The standards also require that the agent must not hold a financial interest in any of the entities that

provide care. Our experience with HCBS in waivers indicates that assessment and person-centered service plan development should not be performed by providers of the services prescribed. However, we recognize that in some circumstances there are acceptable reasons for a single provider of service that performs all of those functions. In this case, the Secretary would require the State Plan to include provisions assuring separation of functions within the provider entity.

*Comment:* One commenter questioned the reason for defining persons responsible for the independent evaluation, independent assessment and the service plan as ''agents'' to distinguish them from ''providers'' of HCBS. Another commenter indicated that it is unclear whether one agent performs an assessment, or different agents with different expertise.

*Response:* In the preamble to the proposed rule, we discussed that we will refer to persons or entities responsible for the independent evaluation, independent assessment, and the person-centered service plan as ''agents'' to distinguish them from ''providers'' of home and community-based services. We also explain that this does not preclude the inclusion of input from other individuals with expertise in the provision of long-term services and supports, or the delivery of acute care medical services, as long as an independent agent retains the final responsibility for the evaluation, assessment, and person-centered service plan functions.

*Comment:* A commenter requested whether states would be permitted to allow a transition period for agents conducting the individualized independent evaluation, assessment and service plan development to attain any new qualifications, if necessary.

*Response:* We believe that it is important for individuals responsible for evaluation, assessment, and/or person-centered service plan development to fully meet the qualifications specified at § 441.730(c) prior to performing these activities.

*Comment:* Several commenters recommended adding a requirement to this section of the regulation that service providers not discriminate against recipients on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, source of payment, or mental or physical disability. Similar protections are contained in the regulations for the Program for All-Inclusive Care for the Elderly (PACE).

*Response:* There are already general provisions in other regulations that pertain to the issues raised by the commenters and that prohibit discrimination in State Medicaid programs on the basis of race, color, national origin, disability, etc., (for example, see § 430.2, § 435.901, § 435.905, and § 435.908). As these regulations apply in determining eligibility and administering the Medicaid program generally, it is not necessary to add a regulation on this subject specific to section 1915(i) of the Act.

*Comment:* Several commenters requested further clarification pertaining to provider qualifications for the participant direction option and requested that provider qualifications for participant-directed workers not limit participants' access to these providers but be defined by the program participant receiving services once s/he is trained on the program rules and expectations. One commenter recommended that CMS make provider qualifications ''default rules'' that could be waived through an informed and affirmative choice, with a signed statement, by consumers who are directing their own care. Another commenter requested that CMS add to the regulation ''Such standards shall not be construed to limit the ability of self-directing individuals who have employer authority to hire, train, manage, or discharge providers pursuant to § 441.674.''

*Response:* As stated in the proposed rule, and retained in the final rule, individuals who choose to self-direct will be subject to the same requirements as other enrollees in the State plan HCBS benefit, including § 441.730 for provider qualifications. Section 441.730 requires states to define in writing standards for providers (both agencies and individuals) of HCBS, and for agents conducting individualized independent evaluation, independent assessment, and person-centered service plan development. As with section 1915(c) of the Act waivers, states have to define minimum service provider qualifications that apply across the service delivery models.

*Comment:* Many commenters expressed support of the conflict of interest provisions of the proposed rule. One such commenter stated support of standards that will result in service plans that have realistic expectations and payment for providers while adequately addressing the client's individual needs, noting that too often costs are driving decisions about the appropriate services for the individual. One mentioned that it is difficult for a system to be completely free of conflict of interest, since any assessor that works for the state has an interest in controlling costs, but stated their belief that acknowledging the conflicts helps to mitigate the effects. Another indicated that guidance should reflect administrative safeguards that consider each state individually and consider the unique characteristics and needs of each state, and include conflict free protections that address the development of the plan and choice of providers with an emphasis on individual preferences. Another requested that this be closely monitored.

*Response:* We appreciate the support and agree with the commenters. We will consider these additional comments as we develop future guidance.

*Comment:* Several commenters requested that § 441.668 exclude a managed care organization from conducting the independent evaluation of individuals. Another stated a managed care organization should not be permitted to conduct the independent assessment of individuals. And another requested this section also exclude ''the state'' from conducting the independent assessment of individuals.

*Response:* We do not believe it is necessary to list specific entities that would not meet these requirements in regulation. We believe the specific requirements of § 441.730 capture the purpose of these requirements to mitigate and prevent conflict of interest.

*Comment:* One commenter indicated that the requirements regarding an independent evaluator would not work in a capitation model, and that it adds another level of bureaucracy and impacts service systems already in place by some states that delegate or contract out this function to another agency. Another commenter stated that the requirements would limit states to the development or use of models that contradict decades of long term care policy and efforts to coordinate an otherwise fragmented system. They expressed that models that consolidate evaluation, assessment, care planning, case management and the provision of services into integrated, single entry systems enable beneficiaries to more seamlessly access services and receive coordinated, integrated plans of care (for example, long term home health care programs, managed long term care, PACE). Another commenter disagreed with the independent agent requirement, stating there may be cost implications if an independent contractor is used to develop the person-centered service plan and that this proposed requirement may work in a fee-for-service benefit, but would not work in a benefit that is capitated.

*Response:* We disagree and have experience with states where this does and is working in these models. While the evaluation to determine whether an individual is eligible for the benefit would need to be retained by an independent entity that is not the provider, providers can contribute information to the entity responsible for the final determination. Regarding the independent assessment of need and person-centered service plan, to summarize § 441.730(b)(5), states can allow providers of State plan HCBS, or those who have an interest in or are employed by a provider of State plan HCBS, to be the entity responsible for the assessment and person-centered service plan functions, when the state demonstrates that they are the only willing and qualified agent to perform these two functions in a geographic area, and the state devises conflict of interest protections including separation of agent and provider functions within provider entities, and a clear and accessible alternative dispute resolution process for individuals. In summary, the requirements at § 441.730, which are based on our experience as well as state and other public feedback, specify how states must comply with statutory requirements. Therefore, we are retaining the requirements from the proposed rule at § 441.730 regarding independent evaluation and conflict of interest standards, in this final regulation. We note that CMS stands ready to assist any State Medicaid agency in need of technical assistance with these requirements.

*Comment:* Several commenters requested that § 441.668(b)(5) be expanded to make it clear that when there is only one provider available, the provider may serve as the agent performing the assessment and the agent developing the plan of care, as long as the requirements in § 441.668(b)(5) are met. Another commenter proposed permitting providers in some cases to serve as both agent and provider of services, but with guarantees of independence of function within the provider entity.

*Response:* We believe that § 441.730(b)(5) already includes this requirement: ''Providers of State plan HCBS for the individual, or those who have an interest in or are employed by a provider of State plan HCBS for the individual, except when the state demonstrates that the only willing and qualified agent to perform independent assessments and develop plans of care in a geographic area also provides HCBS, and the state devises conflict of interest protections including separation of agent and provider functions within provider entities, which are described in the State plan for medical assistance and approved by the Secretary, and individuals are provided with a clear and accessible alternative dispute resolution process.''

*Comment:* A couple of commenters recommended deletion of § 441.668 (b)(5), indicating that this provision to waive the conflict of interest standards minimizes safeguards to protect individual health, welfare, choice, and control. They indicate that states should be required to develop in all geographic areas sufficient systems of independent evaluators, independent assessors, and providers to develop service plans. They noted that since CMS's experience with HCBS waivers has shown that assessment and service plan development should not be performed by service providers, this should be carried over and applied to State plan HCBS as well.

*Response:* Section 441.730 (b)(5) requires that service providers not be permitted to be the agent responsible for these functions, but includes an exception to allow a state to permit a service provider to serve as the agent performing independent assessments and development of the person-centered service plan when that service provider is the only entity available in a certain area. This is only permitted to address this potential problem of not having any entity available that is not a provider to perform these essential functions of independent assessment and person-centered service plan development (under any circumstances, determination of eligibility for the State plan HCBS benefit cannot be performed by a HCBS provider or an entity with an interest in providers of HCBS). Without this exception, states would be unable to make State plan HCBS available to participants in these areas. If a state employs this exception it must guarantee the independence of this function(s) within the provider entity. In certain circumstances, we may require that states develop ''firewall'' policies, for example, separating staff that perform assessments and develop person-centered service plans from those that provide any of the services in the plan; and meaningful and accessible procedures for individuals and representatives to appeal to the state. We also will not permit states to circumvent these requirements by adopting state or local policies that suppress enrollment of any qualified and willing provider.

*Comment:* A couple of commenters expressed concerns that an independent agent may not have sufficient knowledge about the needs of an individual, and that providers who have longer histories with the individuals are better qualified to conduct evaluations and assessments and develop care plans and would improve individuals' access to the benefit. One indicated that independent agents may not have the capacity to follow-up with individuals who are hard to reach, such as individuals experiencing homelessness. Another indicated that we should allow service providers within supportive housing to complete assessments or it might unintentionally limit the availability of supportive housing for HCBS beneficiaries. They suggest that CMS engage independent agents in oversight activities to ensure individuals are made aware of all available options and that providers do not inappropriately advantage themselves.

*Response:* We recognize the importance of ensuring that the agents responsible for the evaluations, assessment, and person-centered service plans are trained in assessment of individual needs for HCBS and knowledgeable about best practices. That is why we included requirements at § 441.730(a) for states to define in writing standards for agents, and at § 441.730(c), that these qualifications must include training in assessment of individuals whose physical or mental conditions trigger a potential need for home and community-based services and supports, and current knowledge of best practices to improve health and quality of life outcomes. We further note that we understand that the process of developing appropriate plans of care often requires the inclusion of individuals with expertise in the provision of long-term services and supports or the delivery of acute care medical services.

*Comment:* Another commenter stated that CMS's proposal to remove providers from participating in assessments, evaluations, and plans of care does not appear required by the DRA and requested that CMS remove this prohibition on providers' ability to carry out these critical functions and deliver the needed services to their beneficiaries.

*Response:* This rule does not prevent providers from participating in these functions, but requires that an independent agent retains the final responsibility for the evaluation, assessment, and person-centered service plan functions. We understand that the process of developing appropriate plans of care often requires the inclusion of individuals with expertise in the provision of long-term services and supports or the delivery of acute care

medical services. In order to meet the intent of the statute for standards that safeguard against conflict of interest standards, we are retaining these requirements as proposed.

*Comment:* Several commenters recommended that minimum safeguards/standards be prescribed in the regulation, including standards related to training, skills, and competency, with state flexibility to develop additional standards and CMS reviewing the state standards for approval. One recommended giving service providers and agencies rate incentives to partner with training providers and community colleges to ensure that the qualifications of the workforce meet the needs of their clients. Others recommended adding that agents must have current knowledge/training in evidence-based practices for assessment and evidence-based best practices to improve health and quality of life outcomes, person-centered planning, and informed decision making. Another recommended that CMS identify broad competency areas and then identify the specific skills associated with each of these competency areas. Another noted that individuals performing assessments will need to be sufficiently trained to assess cognitive impairment.

*Response:* Section 441.730(a) of the proposed rule would require states to define in writing standards for agents, and at § 441.730(c), that these qualifications must include training in assessment of individuals whose physical or mental conditions trigger a potential need for home and community-based services and supports, and current knowledge of best practices to improve health and quality of life outcomes. We agree with the commenters' suggestions and have added ''cognitive'' to § 441.730(c).

*Comment:* One commenter encouraged the addition of language that focuses on the qualifications, training and outcomes ''of the case manager in the areas of case management, the populations they are serving, funding and resources available in their community, the offering of free choice of providers and service options and training and expectations regarding conflict-free case management.''

*Response:* We note that we are not restricting the individuals or entities who can perform these administrative activities to case managers. We also note that conflict of interest requirements are found at § 441.730(b). We agree that knowledge of available resources, service options, and providers is not an element specifically captured in the proposed regulation language, so we have added language to § 441.730(c).

*Comment:* A couple of commenters requested that CMS revise the regulation to provide that the required training of agents must include person-centered and family driven services planning, as well as participant-directed practices.

*Response:* We believe that this idea is already reflected for purposes in the broader phrase ''and current knowledge of best practices to improve health and quality of life outcomes.''

*Comment:* One commenter pointed out that evaluators should also obtain proper training and should be reflected in § 441.668(c).

*Response:* The independent evaluators determine whether or not an individual meets the eligibility requirements for the benefit, but unless they are also the same entity responsible for the independent assessment and plan of care development, we do not believe it would be reasonable to require that they meet these minimum training requirements that are appropriate minimum qualifications for agents responsible for independent assessment and person-centered service plan development (assessment of individuals whose physical or mental conditions trigger a potential need for HCBS and supports, and current knowledge of available resources, service options, providers, and best practices to improve health and quality of life outcomes).

10. Definition of Individual's Representative (§ 441.735) (Proposed § 441.671)

In § 441.671, we proposed to define the term ''individual's representative'' to encompass any party who is authorized to represent the individual for the purpose of making personal or health care decisions, either under state law or under the policies of the State Medicaid agency. We did not propose to regulate the relationship between an individual enrolled in the State plan HCBS benefit and his or her authorized representative, but noted that states should have policies to assess for abuse or excessive control and ensure that representatives conform to applicable state requirements. We noted that states must not refuse to allow a freely-chosen person to serve as a representative unless the state has tangible evidence that the representative is not acting in the best interest of the individual, or that the representative is incapable of performing the required functions.

*General Comments:* All commenters for this section agreed with this provision, and some additionally suggested some revision to the language as described in the comments below.

*Comment:* A couple of commenters recommended changing ''family member'' to ''a parent support provider.''

*Response:* The language in this phrase is statutory, from section 1915(i)(2) of the Act. The commenter did not provide any definition of this term or explanation. For these reasons, we are unable to accept this change as requested, but note that this provision at § 441.735(b) is not an exhaustive list.

*Comment:* Another commenter expressed that an individual's representative may not necessarily be the individual's guardian, but some other representative freely chosen by the individual and important to him or her.

*Response:* We agree and believe the language in the regulation supports this as an option to the individual.

*Comment:* We received many comments about the term ''best interest.'' Most of these commenters requested that CMS substitute the term ''substituted judgment'' instead of ''best interest.'' One cautioned that ''best interests'' may be a highly subjective assessment, and stated their belief that substantial deference should be established for the stated interests of the individual and the decisions of their chosen representative. Others referenced guidelines established by the National Guardianship Association (NGA), which indicate that substituted judgment is a principle of decision-making that promotes the self-determination of the beneficiary and that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the beneficiary themselves would make based on their own preferences and wishes. This process involves consultation with the individual and those important to the individual. If a substituted judgment is not available, guardians can implement a ''best interest'' principle, which considers all options and alternatives and bases the decision on what a reasonable person would do in the given situation.

*Response:* We agree with these commenters and have revised this section of the regulation, § 441.735(c), so that it now reads as follows:

''When the state authorizes representatives in accordance with paragraph (b) of this section, the state must have policies describing the process for authorization; the extent of decision-making authorized; and safeguards to ensure that the representative uses substituted judgment on behalf of the individual. State policies must address exceptions to using substituted judgment when the individual's wishes cannot be ascertained or when the individual's wishes would result in substantial harm to the

individual. States may not refuse to recognize the authorized representative that the individual chooses, unless in the process of applying the requirements for authorization, the state discovers and can document evidence that the representative is not acting in accordance with these policies or cannot perform the required functions. States must continue to meet the requirements regarding the person centered planning process at § 441.725 of the rule.''

*Comment:* We received one comment about state laws regarding guardianship and the jurisdiction of the courts, in which they stated that guardians are appointed by the court, not chosen by the individual.

*Response:* We believe this concept is captured with the use of the term ''legal'' prior to ''guardian'' in the language of the final regulation at § 441.735(a) which pertains to a legal guardian authorized under State law to represent the individual. We note that the provision at § 441.735(c) only applies to individuals specified at § 441.735(b) who are authorized under the policy of the State Medicaid agency to represent the individual.

*Comment:* A couple of commenters confirmed the importance of participants' access to a representative option. One requested that CMS add ''States should ensure that representatives conform to good practice concerning free choice of the individual, and assess for abuse or excessive control.'' Another stated that supports providers (for example, consultants, support brokers) need to be appropriately trained on the participant direction paradigm to be prepared to successfully identify when a representative may be using ''excessive control'' as well as to enforce ''free choice'' of representatives.

*Response:* If by ''free choice of the individual'' the commenter means the individual's free choice of providers, this Medicaid requirement at section 1902(a)(23) of the Act is not waived or disregarded under section 1915(i) of the Act and is not a subject of this rule. We believe that the proposed language broadly covers the other elements of this comment, and we will consider addressing this issue further in future guidance.

*Comment:* One commenter requested that the word ''should'' be replaced with ''must'' or ''implement policies to.''

*Response:* The proposed and final regulation language does not contain the word ''should.''

*Comment:* One commenter expressed the need for a representative to be identified by the participant after s/he is well informed of the program and his/her responsibilities. They further commented that effective practices for identifying and choosing representatives should be shared with the participants during program orientation and as needed.

*Response:* We believe this would be an example of a good state practice, which we will consider for inclusion in future guidance.

*Comment:* One commenter stated that based on the general principles of participant direction, states should not require that individuals have representatives without prior attempts to train and support the participant.

*Response:* The purpose of this provision is not to require an individual to have a representative but it is to require states to allow the option for an individual to choose a representative for the purpose of participating in decisions related to the person's care or well-being when the individual requires assistance in making such decisions, and to have policies for the process for authorization, the extent of decision-making authorized, and safeguards. We note that where a legal guardian, conservator, or other person has the sole authority under state law to make decisions related to the individual's care, the state must comply with the decisions of the legal surrogate.

*Comment:* One commenter requested that the following language from the preamble of the proposed rule, or something similar, be added to the actual regulation text: ''. . . process should still be focused on the individual requiring services, and that supports should be provided to allow the individual to meaningfully participate and direct the process to the maximum extent possible.''

*Response:* We have added the following to § 441.735(c) of this rule:

''States must continue to meet the requirements regarding the person-centered planning process at Section 441.725 of this rule.''

11. Self-Directed Services (§ 441.740) (Proposed § 441.674)

Section 1915(i)(1)(G)(iii)(I) and (II) of the Act provides that states may offer enrolled individuals the option to self-direct some or all of the State Plan HCBS that they require. Self-directed State plan HCBS allow states another avenue by which they may afford individuals maximum choice and control over the delivery of services, while comporting with all other applicable provisions of Medicaid law. We have urged all states to afford waiver participants the opportunity to direct some or all of their waiver services, without regard to their support needs. With the release of an updated, revised section 1915(c) of the Act waiver application in 2008, we refined the criteria and guidance to states surrounding self-direction (also referred to as participant-direction), and established a process by which states are encouraged, to whatever degree feasible, to include self-direction as a component of their overall HCBS waiver programs. While section 1915(i) of the Act does not require that states follow the guidelines for section 1915(c) of the Act waivers in implementing self-direction in the State plan HCBS benefit, we anticipate that states will make use of their experience with section 1915(c) of the Act waivers to offer a similar pattern of self-directed opportunities with meaningful supports and effective protections.

*Comment:* Several commenters recommended that CMS include training as one aspect of employer-authority activities that self-directing beneficiaries may be allowed to exercise. A couple of commenters urged CMS to require states to offer training for individuals on selecting, hiring, supervising and firing service providers, in addition to service provider training.

*Response:* We agree with this recommendation and have added the following to the § 441.740(e)(3):

''Voluntary training on how to select, manage, and dismiss providers of State plan HCBS.''

We note that many states currently have existing training programs available that could potentially be leveraged or modified to meet such a requirement. Training programs should be able to meet the needs of individuals at varying levels of need with regard to selecting, managing, and dismissing providers. Consistent with the philosophy of self-direction, this training must be voluntary, and may not be a mandatory requirement for the individual to receive services under this option.

*Comment:* One commenter requested training for agents conducting evaluations, assessments, and service planning.

*Response:* Training for agents conducting evaluations, assessments, and person-centered service planning is a requirement that was stipulated under the proposed rule at § 441.668, provider qualifications, and remains unchanged in this final rule at § 441.730.

*Comment:* One commenter recommended that CMS consider requiring states to provide joint trainings for both consumers and providers, as they have resulted in improved services, better

communication and a stronger relationship.

*Response:* We believe that this would be more suited as one option that a state could put into practice to meet training requirements.

*Comment:* One commenter indicated that states should be provided guidance on elements that are important for participant direction assessment (for example, strengths, abilities, individual goals, need for a representative, capacity to self-direct with an eye for developing a support system to ensure success in self-directing, and risks).

*Response:* These elements are already required under § 441.725(b), pertaining to the person-centered service plan.

*Comment:* One commenter applauded CMS for their inclusion of participant direction support functions, stating that they are well documented by research and that successful participant direction opportunities are dependent on the appropriate execution of each of these support functions. The commenter requests that CMS describe within the rule the elements of each of these functions (as seen with the financial management services function).

*Response:* We appreciate the support of the commenter. Experience with section 1915(c) of the Act and other Medicaid HCBS authorities have been instrumental in demonstrating the importance of the availability of information, assistance, and support to participants who self-direct their HCBS. Since the purpose of this regulation is to stipulate the minimum requirements that states must meet for the section 1915(i) of the Act authority, we believe the commenter's request will be best suited as future sub-regulatory guidance/policy.

*Comment:* One commenter expressed appreciation of well-structured definitions for both employer authority and budget authority, and recommended an edit to the ''employer authority'' definition to ensure its consistency with existing best practices: replace the ''or'' in ''the ability to select, manage, or dismiss providers of State plan HCBS'' with an ''and'' since the ability to do all three functions is critical to the model.

*Response:* Since each of these functions is optional, and we want to ensure that the protections at § 441.740(c) are provided with selection of any of these optional functions, we are unable to adopt the commenter's recommended revision.

*Comment:* Several commenters requested revising the provisions related to budget authority in § 441.674(d)(5) to make it clear that self-directing individuals with budget authority may be allowed to pay providers directly. Another commenter requested revision to § 441.674(e)(2)(iii) of the proposed rule to clarify that employer-related financial transactions, such as paying worker wages and taxes, may also be made for individuals with employer authority.

*Response:* Section 1915(i) of the Act does not give states the authority to allow participants to perform transactions or convey cash to the individual or representative. It does allow for budget authority to grant individuals control of expenditures. In addition, with sufficient state Medicaid agency process and oversight, states may choose to employ alternate methods to maximize participant autonomy within the parameters of the section 1915(i) of the Act authority.

*Comment:* One commenter requested that we add a requirement to § 441.674(b)(4) that ''there are state procedures to ensure the continuity of services during the transition from self-direction to other models of service.''

*Response:* We agree with this comment and have added additional language to the rule at § 441.740(b)(4).

*Comment:* One commenter requested that § 441.674(d) regarding budget authority require that the service plan specify the authority to be assumed by the individual, any limits to the authority, and specify parties responsible for functions outside of the authority to be assumed.

*Response:* The commenter's request is already addressed in the requirement as included in the proposed rule under § 441.674(b)(2), which we are finalizing at § 441.740(b)(2).

*Comment:* Section § 441.674(e)(2) regarding financial management supports should clarify that federal financial participation (FFP) is available for this service.

*Response:* States have the option of providing this type of activity as a Medicaid administrative activity or as a Medicaid service, as long as the activity meets Medicaid requirements. It is not necessary for this to be specified in the text of the regulation. We will explain these options in future guidance.

*Comment:* One commenter requested clarification to indicate that a state may provide for employer functions itself, or through a fiscal/employer agent or other state-contracted entity under the state's direction and control. They stated that it should also be clear that states have the option to offer these supports to individuals directly or through a public entity.

*Response:* States have the option of providing this type of activity as a Medicaid administrative activity or as a Medicaid service, as long as the activity meets Medicaid requirements. We do not believe that this degree of specificity would be appropriate as a requirement under regulation text, but will be considered in the development of any future guidance.

*Comment:* Two commenters requested CMS to revise the requirement that states offer individual supports so that it includes peer-to peer support and family-driven care.

*Response:* While we agree that these are important supports that states should consider making available to individuals, we do not believe that this degree of specificity would be appropriate as a requirement under regulation text. We will however, consider this in the future development of additional guidance.

*Comment:* Two commenters indicated that it is unclear what is meant by, and stated concerns about, the statement that evaluation results will lead to the determination of ''ability to self-direct [both with and without specific supports].'' One of these commenters expressed support of any evaluation criteria that encourages an individual to personally assess his/her interests and abilities to self-direct while not leading to professional decisions made in isolation based solely on the individual's disability, personal characteristics, or experiences. The other commenter stated the belief that, with appropriate supports, essentially all individuals are able to self-direct, using Michael Weymeyer's concept of the individual as causal agent in their life, and that it is hard to understand the purpose of determining the ability of someone to self-direct without supports. Both agree that a person-centered system that includes participant direction should be able to support people to make informed decisions pertaining to their care while providing the individualized support s/he needs to successfully self-direct.

*Response:* The purpose of inclusion of ''without supports'' in this paragraph is to be inclusive of the individual's option to not avail him/herself of the opportunity to use the self-directed supports that states are required to offer under this option, while also preserving the responsibility of states to ensure that the individual receives the needed services in accordance with his/her person-centered service plan.

*Comment:* One commenter stated that self-directed service plans should be aligned with the most integrated setting definition under the ADA and *Olmstead* and recommended additional language be added under § 441.674(b).

*Response:* This recommendation is already captured under § 441.725(b)(1), which pertains to all person-centered service plans.

*Comment:* One commenter expressed an opinion about the requirement in the proposed rule that the service plan indicate not only the services that will be self-directed, but also the ''methods by which the individual will plan, direct, or control these services.'' The commenter expressed that this language is dangerously vague, and as a result, may lead to specificity within the service plan that is not sensitive to the flexible and dynamic processes required for successful participant direction.

*Response:* This language is referring to participant preferences with regards to how they choose to self-direct their services, including employer and/or budget authority if elected by the state. More detail and requirements regarding these two authorities is specified under § 441.740(c) and (d).

*Comment:* One commenter stated the importance of individualized contingency plans as being well stated, and appropriate in the proposed regulation. Another stated that risk management techniques should not interfere with the right to self-direct and other choices and rights unless there is a documented, clear, concrete danger present. Another commenter indicated that it is important that participant direction philosophy inform any risk management techniques, which are required in the proposed rule to be listed in the service plan, with the participant leading the process and creating back-up plans unique to his/her needs. The commenter also supports a transparent individual budget development and monitoring process, but at the same time recognizes the importance of providing participants with accessible information that is not too overwhelming and easy to digest. They recommend that any tools for this purpose be simple and straight forward, making them accessible to all program participants.

*Response:* We appreciate and agree with these comments and will consider them for inclusion in future guidance.

*Comment:* One commenter indicated that states are using the self-directed option to save money, and that self-directed services are often reimbursed at a lower rate than agency-directed services for no clear reason, causing wages for workers in self-directed programs to be substantially lower than wages for agency-controlled workers.

*Response:* Self-directed provision of services provides the states with the option to give individuals the flexibility to negotiate preferred rates for services, frequently with individuals that have a pre-existing relationship with the consumer, for example, a friend or neighbor. This may result in costs for services that are lower than comparable services provided by an agency. The rates selected by individuals who are self-directing may or may not include the administrative overhead that occurs when an agency employs individual workers to provide services.

*Comment:* Several commenters stated that self-direction as a delivery method and supports to participants to self-direct, should be required and not state options. Another stated that agency-based services should be available only for those who cannot manage self-direction (with supports) and have no authorized representative.

*Response:* Section 1915(i)(G)(iii) of the Act allows states the option to offer individual election for self-directed services. The statute does not include the authority for the Secretary to require that the services that states offer under section 1915(i) of the Act must be self-directed. For states that choose to offer individual election to self-direct their HCBS, states must make information and assistance available to those individuals to support their direction of services.

*Comment:* One commenter applauded the ability for states to allow participants to direct any or all of the State plan HCBS benefit, and stated the potential for confusion, unnecessary complexity, and limited control when states decide to limit the ability to self-direct to one specific service. They strongly recommended that states receive technical assistance and guidance on the benefits of participant direction and how to implement participant direction opportunities to the furthest extent possible, including providing access to an individual budget model.

*Response:* We appreciate these comments. We are available to provide guidance and assistance to states and encourage states to contact us with any such requests.

*Comment:* One commenter stated that the following statement is extremely vague and requires clarification: ''According to the proposed rule, individuals who choose to self-direct will be subject to the 'same requirements' as other enrollees in the State plan HCBS benefit.'' They stated that it is important that any requirements created be sensitive to the participant direction philosophy and informed by evidence-based participant direction practices.

*Response:* This statement in the preamble was only stating that the other requirements of section 1915(i) of the Act, such as eligibility, adjustment authority, independent evaluation and assessment, person-centered service plan, etc., are still requirements that must be applied for individuals who choose to self-direct their services. Additional requirements specific to the self-direction option were included in the proposed rule, and were based on our experience with section 1915(c) of the Act waivers and other Medicaid authorities in order to include a similar pattern of self-directed opportunities with meaningful supports and effective protections.

*Comment:* One commenter stated the assumption that states have the option to provide program participants with employer authority or budget authority (as opposed to requiring both), but indicated that they find the language in the proposed rule pertaining to this point vague.

*Response:* Section 441.740(b)(2) already specifies ''and/or'' to indicate this option.

*Comment:* One commenter, with a reminder that the proposed rule allows states to enter into a ''co-employer'' relationship with participants, stated that it is important to recognize that there is no one standard definition for ''Agency with Choice,'' leading to inconsistent application and monitoring of this model. The commenter strongly encouraged CMS, in collaboration with the Department of Labor and informed by existing state labor laws and stakeholders, to set standards for the ''Agency with Choice'' model that are reflective of the participant direction paradigm and the liabilities specific to this model.

*Response:* We appreciate this comment and will take it under consideration in the development of future guidance.

*Comment:* One commenter recommended that § 441.674(b) include a reference to § 441.674(e) requiring self-direction supports to be included in the service plan, since paragraph (e) is cross- referenced in other paragraphs, at § 441.674(c)(2) and § 441.674(d)(4)).

*Response:* After consideration of this comment, we believe the inclusion of this requirement under both § 441.740(c)(2) and (d)(4) is repetitive and would be better placed under § 441.740(b) as a new paragraph (5). Therefore, we made this addition to § 441.740.

*Comment:* One commenter recommended that § 441.674(e) should explicitly include the requirement suggested in the preamble (77 Fed. Reg. 26373, first column) for an ''independent advocate.''

*Response:* We are not adding this as a requirement to this final rule. However, we believe the availability of an independent advocate to assist the individual with the access to and oversight of their waiver services, including self-direction, is an important component of a strong self-directed system.

*Comment:* One commenter recommended that CMS explain, in § 441.674(a), that individuals should be encouraged to retain authority over all functions (budgeting, staffing, etc.), but that individuals could choose only to retain authority over specific functions. They also recommended that CMS add the term ''<sup></sup>, but not limited to,'' after the term ''including.''

*Response:* The purpose of § 441.740(a) is to specify the state option to offer the election for self-directing HCBS. The language that the commenter has suggested would not be appropriate for this regulation since it would not stipulate a state requirement. Regarding the second comment, we do not agree with leaving this open-ended, and since it is unclear what else would be self-directed in addition to amount, duration, scope, provider, and location of the HCBS, we are unable to make the suggested revision.

*Comment:* One commenter urges CMS to promote matching service registries as robust models of information and assistance as a way to assist participants with identifying and accessing independent providers.

*Response:* We appreciate this comment and will consider it for inclusion in future guidance.

12. State Plan HCBS Administration: State Responsibilities and Quality Improvement (§ 441.745) (Proposed § 441.677)

a. State Responsibilities

States are required to provide CMS annually with the projected number of individuals to be enrolled in the benefit, and the actual number of unduplicated individuals enrolled in the State plan HCBS benefit in the previous year. Section 1915(i) of the Act authorizes a state to elect not to apply comparability requirements, thus permitting states to target the entire section 1915(i) of the Act benefit, specific services within the benefit, or both. Under § 441.745(a)(1)(ii), we specify that the state may not limit enrollee access to services in the benefit for any reason other than assessed need or targeting criteria. This includes the requirement that services be provided to all individuals who are assessed to meet the targeting criteria and needs-based criteria, regardless of income. This is an important distinction between the limits states place on the services to be offered when they design the benefit, as opposed to limiting access to the services that are in the benefit for particular enrolled individuals. As discussed in the proposed rule, states have a number of permitted methods to control utilization. We proposed that once an individual is found eligible and enrolled in the benefit, access to covered services can be limited on the basis of the needs-based criteria as evaluated by the independent assessment and incorporated into the person-centered service plan. By not limiting access, we mean that an enrollee must receive any or all of the HCBS offered by the benefit, in scope and frequency up to any limits on those services defined in the state plan, to the degree the enrollee is determined to need them. Enrollees should receive no more, and no fewer, HCBS than they are determined to require.

b. Administration

We proposed in § 441.677(a)(2)(i) an option for presumptive payment. In accordance with section 1915(i) of the Act, the state may provide for a period of presumptive payment, not to exceed 60 days, for evaluation of eligibility for the State plan HCBS benefit and assessment of need for HCBS. This period of presumptive payment would be available for individuals who have been determined to be Medicaid eligible, and whom the state has reason to believe may be eligible for the State plan HCBS benefit. We proposed that FFP would be available for evaluation and assessment as administration of the approved state plan prior to an individual's determination of eligibility for and receipt of other section 1915(i) of the Act services. If the individual is found not eligible for the State plan HCBS benefit, the state may claim the evaluation and assessment as administration, even though the individual would not be considered to have participated in the benefit for purposes of determining the annual number of individuals served by the benefit. FFP would not be available during this presumptive period for receipt of State plan HCBS.

In § 441.677(a)(2)(ii), we proposed that a state may elect to phase-in the provision of services or the enrollment of individuals if the state also elects not to apply comparability requirements and to target the benefit to specific populations. However, there is no authority to limit the numerical enrollment in the benefit or to create waiting lists. Therefore, we proposed that any phase-in of services may not be based on a numerical cap on enrollees. Instead, a state may choose to phase-in the benefit or the provision of specific services based on the assessed needs of individuals, the availability of infrastructure to provide services, or both. Infrastructure is defined as the availability of qualified providers or of physical structures and information technology necessary to provide any service or set of services. A state that elects to phase-in the benefit must submit a plan, subject to CMS approval, that details the criteria used for phasing in the benefit. In the event that a state elects to phase-in the benefit based on needs, all individuals who meet the criteria described in the phase-in plan must receive covered services. If a state elects to phase-in services based upon infrastructure, the plan must describe the capacity limits, strategies to increase capacity, and must assure that covered services will be provided to all individuals who are able to acquire a willing and qualified provider. Any phase-in plan must provide assurance that the benefit, and all included services, will be available statewide to all eligible individuals within the first 5-year approval period.

In § 441.677(a)(2)(iii), we proposed that a state plan amendment submitted to establish the State plan HCBS benefit must include a reimbursement methodology for each covered service. In some states, reimbursement methods for self-directed services may differ from the same service provided without self-direction. In such cases, the reimbursement methodology for the self-directed services must also be described.

In § 441.677(a)(2)(iv), we proposed that the state Medicaid agency describe the line of authority for operating the State plan HCBS benefit. The State plan HCBS benefit requires several functions to be performed in addition to the service(s) provided, such as eligibility evaluation, assessment, and developing a person-centered service plan. To the extent that the state Medicaid agency delegates these functions to other entities, we proposed that the agency describe the methods by which it will retain oversight and responsibility for those activities, and for the operation and quality improvement of the benefit as a whole. Delegation of responsibilities by the state Medicaid agency must comply with the single state agency requirements of section 1902(a)(5) of the Act and § 431.10.

In § 441.677(a)(2)(v), we included a provision regarding the effective dates of amendments with substantive changes. Substantive changes may

include, but are not limited to changes in eligible populations, constriction of service amount, duration or scope, or other modifications as determined by the Secretary. We added regulatory language reflective of our guidance that section 1915(i) of the Act amendments with changes that CMS determines to be substantive may only take effect on or after the date when the amendment is approved by CMS, and must be accompanied by information on how the State has assured smooth transitions and minimal adverse impact on individuals impacted by the change.

In § 441.677(a)(2)(vi), we indicated that State plan amendments including targeting criteria are subject to a 5-year approval period and that successive approval periods are subject to CMS approval, contingent upon state adherence to federal requirements. In order to renew State plan HCBS for an additional 5-year period, the state must provide a written request for renewal to CMS at least 180 days prior to the end of each approval period.

c. Quality Improvement Strategy

We proposed in § 441.677(b) requirements for quality assurance which states are required to meet under section 1915(i)(1)(H)(i) of the Act. We proposed to require a state, for quality assurance purposes, to maintain a quality improvement strategy for its State plan HCBS benefit. The state's quality improvement strategy should reflect the nature and scope of the benefit the State will provide. We proposed that the State plan HCBS benefit include a quality improvement strategy consisting of a continuous quality improvement process, and outcome measures for program performance, quality of care, and individual experience, as approved and prescribed by the Secretary, and applicable to the nature of the benefit. In § 441.677(b), we proposed to require states to have program performance measures, appropriate to the scope of the benefit, designed to evaluate the state's overall system for providing HCBS. Program performance measures can be described as process and infrastructure measures, such as whether plans of care are developed in a timely and appropriate manner, or whether all providers meet the required qualifications to provide services under the benefit. In § 441.677(b)(1), we also proposed to require states to have quality of care measures as approved or prescribed by the Secretary. Quality of care measures may focus on program standards, systems performance, and individual outcomes.

*Comment:* A commenter stated that the proposed regulations would result in cut backs, loss of jobs, and subsequent loss of care for people who cannot survive without assistance with all their basic needs.

*Response:* These regulations explain requirements for a new provision that provides states with the option to add additional HCBS to their state plan. Since these regulations allow for new additional services, we do not see how this would result in the impact that the commenter suggests.

*Comment:* One commenter requested revision to § 441.677(a)(1)(iii) to add to the requirements advance written notice and the right to appeal denials.

*Response:* This provision of this rule refers to requirements at part 431, subpart E, which is not a subject of this regulation. However, since advance notice is a topic in part 431, subpart E, we have added ''advance notice'' to this regulation at § 441.745(a)(1)(iii).

*Comment:* One commenter stated the belief that operating different parts of the state plan under different rules would be burdensome to states, and opposition to § 441.677(a)(2)(v), which would impose rules for effective dates of state plan amendments that differ from current state plan amendment policy.

*Response:* As explained in the preamble to the rule, and as required at § 441.745(a)(2)(v), state plan amendments which result in a reduction of eligibility or services to section 1915(i) of the Act participants must be submitted with a prospective, rather than retroactive, effective date. While this requirement differs from current SPA procedures, it is consistent with section 1915(c) of the Act submissions. And as section 1915(i) of the Act allows states to add services under section 1915(c)(4)(B) of the Act, we are requiring states submitting section 1915(i) of the Act SPAs to follow the same requirements for those section 1915(c) services outlined in CMS CMCS Bulletin dated April 16, 2012, regarding actions that result in reductions. If a state submits an amendment or renewal to an approved SPA that includes reductions, the reductions would be effective for the remainder of the approved period (once approved), but cannot be applied retroactively to the SPA action's approval date.

*Comment:* One commenter agreed that retroactive amendments should not be available for elimination or reductions in services, but does not consider changes to provider qualifications or rate methodologies to be substantive changes. The commenter stated that defining substantive change to include changes to rate methodology or provider requirements prevents states from acting quickly and efficiently to address legislative direction or changing state needs.

*Response:* We disagree. Since changes to provider qualifications and/or rate methodologies could negatively impact provider availability and result in a reduction of services to a participant, we are requiring a state to submit such SPAs, and receive CMS approval, prior to implementing any changes of this nature.

*Comment:* One commenter stated disagreement with § 441.677(a)(2)(vi), limiting approval period for SPAs with targeting to 5 years and requiring submission of renewals 180 days in advance of expiration, and indicated that these provisions seem contrary to requirements for services under the state plan and are like the creation of a new waiver authority.

*Response:* Section 1915(i)(7)(B) of the Act specifies that when a state elects to target the provision of State plan HCBS to specific populations, that this election will be for a period of 5 years. Therefore, since the 5 year period of operation with the option to renew is a statutory requirement, we are unable to change this provision. Section 1915(i)(7)(C) of the Act permits states to renew for additional 5 year terms if we determine prior to the beginning of each renewal period that the state has adhered to section 1915(i) of the Act requirements and that the state has met its objectives with respect to quality improvement and individual participant outcomes. In order for us to determine that these requirements are met, states must submit renewal SPAs at least 180 days in advance of expiration in order to allow us sufficient time to review. The need for this review timeframe is consistent with our experience under section 1915(c) of the Act renewals.

*Comment:* A few commenters recommended that CMS add to the periods of approval requirement for states that elect to target specific populations at § 441.677(a)(2)(vi), so that it specifically includes the statutory renewal requirement at section 1915(i)(7)(c)(ii) to meet ''the state's objectives with respect to quality improvement and beneficiary outcomes.'' They stressed the importance of quality improvement and good beneficiary outcomes, and indicated that a State plan HCBS benefit should not be renewed if it cannot meet such criteria.

*Response:* We agree with these commenters and have revised § 441.745(a)(2)(vi) accordingly.

*Comment:* We received many comments regarding the option for

presumptive payment at § 441.677(a)(2)(i), as noted below:

• ''CMS should clarify that home and community-based services furnished to individuals in the 3 months prior to a final determination of eligibility are also eligible for FFP once eligibility has been confirmed.''

• ''Presumptive Eligibility is confusing, and should not be limited to evaluations and assessment; however, if someone needed medical data to prove eligibility including disability determination, those services should be provided.''

• ''. . . encourages CMS to take this authority one step further to permit, on a time limited basis, federal financial participation for State plan HCBS furnished to consumers who are presumptively enrolled.''

• ''Please clarify that the availability of Federal financial participation for medically necessary State plan HCBS benefit payments under this option when the individual beneficiary has been found not to be eligible, allows states to hold the beneficiary harmless for the state financial portion.''

• ''We strongly encourage CMS to use its discretion, if possible, to include payment for the HCBS which a state believes the individual would be eligible to receive. This expanded authority is especially important in emergency situations, such as avoiding institutional care.''

• ''We support the creation of flexibility for states to provide HCBS based on presumed eligibility for assessment due to the fact that many disabilities occur rather suddenly, and because there is no guarantee as to when informal support networks may give out or end.''

• ''We commend the inclusion of authority in § 441.677(a)(2) to allow presumptive payment for HCBS evaluations and assessments, and the provision to allow FFP in the cases where presumptive payment was made based on good faith.''

*Response:* We appreciate these comments. Section 1915(i)(1)(J) of the Act gives states the option of providing for a period of presumptive eligibility, not to exceed 60 days, for individuals the state has reason to believe may be eligible for the State plan HCBS benefit. However, eligibility for services under section 1915(i) of the Act is not the same as an eligibility determination for Medicaid generally, as this provision ''shall be limited to medical assistance for carrying out the independent evaluation and assessment'' under section 1915(i)(1)(E) of the Act. Therefore, for clarity, we refer to this limited option as ''presumptive payment.'' Since individuals not eligible for Medicaid may not receive State plan HCBS, the statutory phrase ''and if the individual is so eligible, the specific HCBS that the individual will receive,'' is further describing the assessment under section 1915(i)(1)(E) of the Act for which presumptive payment is available. Payment for State plan HCBS is available once the individual is determined eligible, and not prior to that point. However, FFP would be available for both 1905(a) services and administrative costs incurred for evaluation and assessment activities for individuals who are already eligible for Medicaid. During any such period of presumptive payment, the individual would not receive State plan HCBS, and would not be considered to be enrolled in Medicaid or eligible for the HCBS benefit for purposes of computing the number of individuals being served under the benefit.

*Comment:* One commenter requested clarification as to how states must ensure people are able to move from a needs-based criteria benefits package to benefits that require a level of care. They also requested guidance to states as to how they will monitor for unexpected changes in services and support needs, which might result in the need for services associated with an institutional level of care. They asked that we provide guidance on time lines and processes for conducting level of care assessments as well as for enrolling individuals in a program or benefit that requires a level of care that will best meet their needs.

*Response:* In order to receive approval of a section 1915(i) of the Act SPA, states must establish that the institutional level of care is based on needs-based criteria that are more stringent than the proposed section 1915(i) of the Act needs-based criteria. Although states are required to establish minimum needs-based criteria that an individual would have to meet in order to receive section 1915(i) benefits, the statute did not establish a maximum or ceiling. Therefore, states are permitted to allow access to those who meet institutional needs-based eligibility criteria. We also note that § 441.715(e) requires states to re-evaluate and re-assess individuals receiving the State plan HCBS benefit at least every 12 months, and when the individual's circumstances or needs change significantly or at the request of the individual.

*Comment:* In § 441.677 (a)(1)(i), no details are provided about how states would ''project'' HCBS enrollment. This is a critical calculation because states might have an incentive to understate projections to gain the discretion associated with over-enrollment.

*Response:* We do not believe it is necessary to include such details in the regulation. We note that this paragraph also requires states to report the actual numbers of unduplicated individuals enrolled in the State plan HCBS benefit on an annual basis.

*Comment:* One commenter commended CMS on the inclusion of § 441.677(a)(1)(ii)(C) prohibiting the state from limiting access to HCBS based on income, cost, or location.

*Response:* We appreciate the support of the commenter regarding the inclusion of this requirement which is now at § 441.745(a)(1)(ii)(C).

*Comment:* One commenter recommended that CMS require that states make publicly available targeting, phase-in, and quality improvement plans, including by posting on public Web sites.

*Response:* At this time, we do not post state plans on our Web site. We are working on a project to make approved state plans publicly available. We encourage states to provide for effective public engagement in all of their Medicaid program activities, and states are required to provide 60 day public notice when states change reimbursement methodology or revise CMS approved section 1915(i) of the Act needs-based criteria.

*Comment:* A couple of commenters noted that § 441.677(a)(1)(ii)(B) incorrectly cross-references § 441.656(b)(2), which should be changed to § 441.656(e)(2).

*Response:* We appreciate this comment and have made a revision to this final rule at § 441.745(a)(1)(ii)(B) with the corrected cross-reference to § 441.710(e)(2).

*Comment:* One commenter expressed that CMS should consider requiring states to report on quality measures related to home and community-based settings and community integration for HCBS provided under sections 1915(k), 1915(c), and 1915(i) of the Act.

*Response:* We agree. States are required to demonstrate at the time of approval that they have quality measures in place with a monitoring plan, must include them in the SPA or waiver, and will report to CMS at a frequency to be determined by CMS or upon request by CMS.

*Comment:* One commenter emphasized the important role that non-medical quality measures play in the meaningful evaluation of HCBS. The commenter stated that quality measures should reflect the ultimate mandate resulting from the *Olmstead* decision and the importance of quality of life,

independence, and community integration. The commenter further stated that for those who choose participant direction, measures sensitive to this mode of service delivery need to be implemented, including measures that recognize the role of participants as decision makers and evaluators of the quality of services and supports they receive.

*Response:* We recognize the importance of non-medical quality measures and will incorporate these areas (quality of life, community integration and factors specific to participant-directed services) in development of future guidance.

*Comment:* One commenter noted that due to reported abuses in some states, it must be clear that observation of actual conditions, through on-site monitoring and review and by interviews with service recipients and their advocates and family members, will be the method used to measure compliance; and not simply by reviewing policies, procedures, or assertions. The commenter further stated that it is crucial that the final rule contain the details so CMS has the legal authority to prevent creation of new loopholes or allow for misinterpretation.

*Response:* There may be multiple methods of monitoring health and welfare in a quality monitoring plan. States are required by the regulation to have a quality improvement strategy consisting of a continuous quality improvement process, and outcome measures for program performance, quality of care, and individual experience.

*Comment:* A commenter inquired about the applicability of the state assurances for HCBS waiver programs required by § 441.302, particularly § 441.302(a) Health and Welfare, noting that there is equivalent vulnerability potential for individual beneficiaries receiving HCBS under state plan authority as under section 1915(c) of the Act waiver authority.

*Response:* The regulations noted by this commenter specifically apply to section 1915(c) of the Act home and community-based waiver services and do not specifically apply to section 1915(i) of the Act State plan HCBS. The regulations that implement section 1915(i)(1)(H)(i) of the Act, which requires states to ensure that the provision of HCBS meets federal and state guidelines for quality assurance, can be found in § 441.745(b) and require that states have a quality improvement strategy consisting of a continuous quality improvement process, and outcome measures for program performance, quality of care, and individual experience.

*Comment:* One commenter encouraged CMS to require states to submit their quality improvement strategy to CMS at a specific frequency and consider making such information public.

*Response:* We have required through these regulations that states make this information available to CMS at a frequency determined by CMS or upon the request of CMS. We will consider further specification of these requirements in the development of future guidance.

*Comment:* One commenter recommended revision to § 441.677(b)(1)(ii) to include the following language from the preamble in the text of the final rule: ''Be evidence-based, and include outcome measures for program performance, quality of care, and individual experience as determined by the Secretary.''

*Response:* This recommendation has been adopted in this final rule at § 441.745(b)(1)(ii).

*Comment:* One commenter noted that in order to determine if there is a sufficient infrastructure to effectively implement HCBS, it is necessary for states to gather direct-care worker data such as numbers of direct service workers, gaps in services data, stability of workforce, and average compensation of workers.

*Response:* We agree that this would be useful data for states to consider in the development of a State plan HCBS benefit, but we have not required specific measures, such as the one recommended by the commenter.

*Comment:* One commenter further encouraged CMS to consider how quality principles/requirements would work within the management of long term services and supports and its impact on network adequacy.

*Response:* We appreciate the commenter's recommendation and will take this under consideration as we develop future guidance.

13. Prohibition Against Reassignment of Provider Claims (§ 447.10)

Regarding the proposed provider payment reassignment provision, we received a total of 7 timely items of correspondence from home care provider representatives and other professional associations, state Medicaid directors, non-profit organizations, and other individuals. These comments ranged from general support for the proposed provision, to specific questions and detailed comments and recommendations regarding the proposed changes. A summary of the public comments and our responses are set forth below.

The proposed rule included a provision, retained in this final rule, that will allow states to enter into third party payment arrangements on behalf of individual practitioners for health and welfare benefit contributions, training costs, and other costs customary for employees.

*Comment:* Several commenters expressed support for the proposed provision. Two state Medicaid agency directors appreciate the clarification that third party payments on behalf of certain providers are allowed for customary benefits. That ability, they recommend, is essential and cost-effective for a large group of individual providers of personal care.

*Response:* We appreciate the commenters' support for the proposed provision. CMS has long sought to ensure maximum state flexibility to design state-specific payment methodologies that help ensure a strong, committed, and well-trained work force. Currently, certain categories of Medicaid covered services, for which Medicaid is a primary payer, such as personal care services, suffer from especially high rates of turnover and low levels of participation. We believe the proposed provider payment reassignment provision retained in the final rule will provide to states additional tools to help foster a stable and high performing workforce.

*Comment:* One commenter stated that authorizing payments on behalf of an individual practitioner to a third party for health and welfare benefit costs, training costs, or other benefits customary for employees aligns with essential elements that they advocate for quality direct-care jobs. They stated their belief that this will support state efforts to expand and improve consumer employment and direction of in-home personal care workers. They further stated that workers need affordable health insurance, other family-supportive benefits, and excellent training that helps each worker develop and hone all skills—both technical and relational—necessary to support long-term care consumers in order to ensure that all direct-care workers are able to provide the highest-quality care to all long-term care consumers. They believe that for consumer-directed home care workers, it is even more vital that states assume some of the human resources functions of typical employers.

*Response:* We appreciate the commenter's support for the proposed provision and agree with its potential to improve both the stability and the skills of the health care provider workforce.

The payment arrangements that we are permitting will enhance state options to provide practitioners with benefits that improve their ability to function as health care professionals. For the classes of practitioners for whom the state is the only or primary payer, these payment arrangements are an efficient and effective method for ensuring that the workforce has health and welfare benefits and adequate training for their functioning.

*Comment:* One commenter stated that it will be essential for CMS, states, advocates, program participants, and organizations to understand how this proposed rule is appropriately applied within a participant direction model. The proposed provision, they suggested, should by no means be interpreted to allow for restrictions on participants' decisions pertaining to what s/he feels is critical to the managing of workers. In their own training, program participants should be informed of the benefits for which workers are eligible to ensure informed decisions are made. They urged that any additional deductions should be paid for with increased funding for the program rather than be paid directly from individuals' budgets already allocated to needed services and supports.

*Response:* Direct payment of funds by states to third parties on behalf of practitioners, to ensure benefits that support those practitioners and provide skills training, may help ensure that beneficiaries have greater access to such practitioners and higher quality services. In addition, if a state elects to withhold certain payments from practitioners, as the proposed provision would allow, and forwards those amounts to a third party on behalf of that practitioner for health and welfare contributions, training programs, or in support of other employee benefits, there will not necessarily be any impact on program budgets. This rule will not require any change in state funding to the extent that practitioner rates already factored in the costs of benefits and skills training. This rule will simply provide flexibility for states to fund such costs directly and ensure uniform access to benefits and skills training for practitioners. Indeed, there may be cost savings resulting from the collective purchase of such benefits and greater workforce stability.

*Comment:* One commenter supports CMS' objective of clarifying the prohibition on reassignment in section 1902(a)(32) of the Act to ensure that it is limited to its intended application and that it does not have any unintended adverse impact on important state Medicaid operations. They suggested that states have long sought this clarification primarily in the context of state efforts to expand and improve programs that maximize consumer choice and independence and allow individuals to receive long term care services and supports in their homes and communities. They stated that the health care providers who assist these individuals are considered independent service practitioners both due to their relationship to the state and the consumer, and as a result face barriers including a lack of access to benefits and training. It makes sense, therefore, for states to be able to make ''employer-like payments from the Medicaid service fee to fulfill employer-like functions'' that overcome these employment barriers.

*Response:* CMS appreciates the commenter's support for the proposed provision and agrees that for the classes of practitioners for whom the state is the sole or primary payer, and has many attributes of an employer, the state should be afforded flexibilities to help ensure a stable, high performing workforce.

*Comment:* One commenter indicated that as a future nurse practitioner, she believes the application of this proposed provision is timely and she believes it will support state efforts to claim ''excess provider payments that are not directly going to the provider but could be used to advance statewide practice from a global perspective.''

*Response:* We appreciate the commenter's support for the proposed provision. However, we would note that the proposed provider payment reassignment provision does not involve ''excess provider payments''. Rather, as in the proposed rule, the final rule will offer states flexibility in determining appropriate costs to consider in their development of payment rate methodologies to ensure adequate training, health and welfare benefits, and other benefits customary for employees within the development of that rate. States will be permitted to directly pay third parties for health and welfare benefits, training, and other employee benefit costs. These amounts would not be retained by the state, but would be paid on behalf of the practitioner for the stated purpose. In fact, we believe that direct payment of funds to third parties on behalf of the practitioner may be viewed as advantageous by the practitioner insofar as they have increased opportunities for training. In addition, direct payment of funds to third parties on behalf of the practitioners may ensure that beneficiaries have greater access to such practitioners and higher quality services.

*Comment:* One commenter noted that, using the proposed provision, Medicaid can leverage its dominant role and help stabilize the direct care workforce. Specifically, the commenter noted that by encouraging Medicaid to directly pay practitioners for health and welfare benefit costs, training, or other benefits customary for employees, job quality will improve leading to improving recruitment and retention of skilled direct-care workers and better quality care. The commenter also recommended that CMS provide states with the appropriate technical assistance in order to assist them in adequately conducting needs assessments of their own direct-care workforce.

*Response:* We agree that states that voluntarily elect to utilize the proposed provider payment reassignment provision may help improve their own health care provider workforce. We also agree with the need for states to receive adequate technical assistance from us in order to implement the provision. States with questions regarding the provision are encouraged to contact their Regional Office for further guidance.

*Comment:* One state asked if the third parties to whom withheld funds are provided would be subject to the provisions of part 455, subpart E, Provider Screening and Enrollment.

*Response:* No. If the state elects to reassign provider payments for health and welfare costs, training expenses, or other employee benefits, the third party to whom those payments are assigned would be the recipient of such funds, but not the provider of record and hence not subject to provider qualification requirements. The amounts paid to a third party would be on behalf of the individual practitioner.

*Comment:* One commenter seeks clarification as to what would constitute a health and welfare benefit contribution. Specifically, one state would like to know if this would include amounts for paid time off for personal care attendants.

*Response:* The proposed change, retained in the final rule, permits each state the option to elect such payment arrangements to the extent that the state determines that they are related to benefits such as health care, skills training and other benefits customary for employees. States will need to review their individual circumstances and workforce needs to determine if the measures are related to such benefits, and would help serve program objectives such as to ensure a stable, high performing workforce. We do not wish to prescribe the types of benefits

the state might wish to include in its definition of health and welfare benefits, such as paid time off for personal care attendants. As in the proposed rule, the final rule offers states flexibility in determining appropriate aspects to consider in their development of payment rate methodologies to ensure adequate training, health care, and other employee benefits for practitioners, as defined by the state.

*Comment:* One commenter requested a modification to the proposed regulatory text for the provider payment reassignment provision to avoid a possible misunderstanding as to its coverage. Specifically, the commenter recommended a change to clarify that it is applicable to providers for whom the main source of service revenue is the Medicaid program. As proposed, the language states that the provider payment reassignment exception is ''[in] the case of practitioners for which the Medicaid program is the primary source of revenue . . .'' Without such clarifying language, the commenter recommends, a state may not be able to make deductions for health care, training, and other benefits that it provides for individuals who operate adult foster care homes in their residences. Since the consumer pays the provider for room and board in that instance, the provider's primary source of revenue may not be considered to be the Medicaid program.

*Response:* We have clarified the language in the final rule by specifying that the state must be the primary source of service revenue for the practitioner. The proposed regulatory text would permit states to make payment to third parties for provider benefits when the state is operating in the role of the provider's employer (even if the state is not the employer for other purposes). As clarified, the text will provide flexibility for a state to look at revenue only related to services furnished by the practitioner, rather than revenue related to shelter and food costs. We believe the proposed regulatory text, which we are retaining, provides the necessary latitude for states to determine whether it is acting in the role of an employer for a particular class of practitioners.

## III. Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act)

### *A. Background*

Section 1915(c) of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a state may offer Home and Community-Based Services (HCBS) to state-specified group(s) of Medicaid beneficiaries who otherwise would require services at an institutional level of care. This provision was added to the Act by the Omnibus Budget and Reconciliation Act of 1981 (Pub. L. 97–35, enacted August 13, 1981) (OBRA'81) (with a number of subsequent amendments). Regulations were published to effectuate this statutory provision, with final regulations issued on July 25, 1994 (59 FR 37719). In the June 22, 2009 **Federal Register** (74 FR 29453), we published the Medicaid Program; Home and Community-Based Services (HCBS) advance notice of proposed rulemaking (ANPRM) that proposed to initiate rulemaking on a number of areas within the section 1915(c) of the Act program. In the proposed rule published on April 15, 2011 (76 FR 21311–21317), we discussed the comments relating to questions posed by the ANPRM, which are addressed in this final rule. We included proposed language for settings in which HCBS could be provided to elicit further comments on this issue in the section 1915(c) of the Act proposed rule, in the section 1915(k) of the Act proposed rule published on February 25, 2011 and also in the section 1915(i) of the Act proposed rule published on May 3, 2012 as we recognize the need for a consistent definition of home and community-based settings. It is our goal to align the final rule language pertaining to home and community-based setting across the sections 1915(c), 1915(i) and 1915(k) of the Act Medicaid HCBS authorities. We further sought to use this opportunity to clarify requirements regarding timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates, and strategies available to CMS to ensure state compliance with the requirements of section 1915(c) of the Act.

We have earlier explained our purpose for proposing definitions regarding home and community-based settings (see discussion under section II.A. of this rule).

We believe that these final changes will have numerous benefits for individuals and states alike. In addition to addressing individual and stakeholder input, these changes will improve HCBS waiver programs and support beneficiaries by enabling services to be planned and delivered in a manner driven by individual needs rather than diagnosis. These changes will enable states to realize administrative and program design simplification, as well as improve efficiency of operation. The changes related to clarification of HCBS settings will maximize the opportunities for waiver participants to have access to the benefits of community living and to receive services in the most integrated setting, and will effectuate the law's intention for Medicaid home and community-based services to provide alternatives to services provided in institutions.

### *B. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments*

On April 15, 2011, we published a proposed rule (76 FR 21311) entitled, ''Medicaid Program: Home and Community-Based Services (HCBS) Waivers'' which proposed revising the regulations implementing Medicaid home and community-based services under section 1915(c) of the Act in several key policy areas. First, the proposed rule provides states the option to combine the existing three waiver targeting groups as identified in § 441.301. In addition, we proposed changes to the HCBS waiver provisions to convey requirements regarding person-centered service plans, characteristics of settings that are, as well as are not, home and community-based, to clarify the timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates, and to describe the additional strategies available to us to ensure state compliance with the statutory provisions of section 1915(c) of the Act.

We received a total of 1653 comments from State Medicaid agencies, advocacy groups, health care providers, employers, health insurers, and health care associations. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding the proposed changes.

Brief summaries of each proposed provision, a summary of the public comments we received (with the exception of specific comments on the paperwork burden or the economic impact analysis), and our responses to the comments are as follows.

The following summarizes a few general comments received regarding the notice of proposed rulemaking and also comments regarding issues not contained in specific provisions. We appreciate and thank the commenters for these various remarks. We realize these commenters raise important considerations in support of persons receiving Medicaid HCBS living in community settings, in integrated

settings, and working in jobs with meaningful wages. Since these important comments did not address any specific regulatory provisions in the proposed rule, there is no need to respond to them further in the final rule:

*Comment:* We received many comments supporting the proposed policies in the proposed rule, as well as some comments expressing concerns about the various aspects of the rule.

*Response:* We appreciate the feedback received on the proposed rule and have relied heavily on the insights provided by states, advocacy groups, consumers and health care providers. We appreciate the acknowledgement and support of the policies.

*Comment:* We received several comments expressing concern about stakeholder input with respect to these rules.

*Response:* We recognized the need for a diversity of stakeholder input. Thus, in the June 22, 2009 **Federal Register** (74 FR 29453), we released an advance notice of proposed rulemaking that proposed to initiate rulemaking on a number of areas within the section 1915(c) of the Act program and to solicit diverse comment. Additionally, after we published the proposed rule on April 15, 2011 (76 FR 21311), we continued to meet with stakeholders that included advocacy groups, states, other federal agencies, provider groups and assisted living groups as we developed this rule.

We plan to continue to communicate with states and build upon state experience as we work with states to implement new policies and program changes as a means of ensuring a successful partnership between states and federal government. In addition, we will provide technical assistance and support to states. We encourage states to share across states as implementation continues. The public comments we receive will inform the development of future operational guidance and tools that will be designed to support state implementation efforts.

1. Contents of Request for a Waiver (§ 441.301)

a. Person-Centered Planning Process § 441.301(c)(1) (Proposed § 441301(b)(1)(i)(A))

The provisions of this final rule will apply to all states offering Medicaid HCBS waivers under section 1915(c) of the Act. Comments were supportive of our interest in setting forth requirements regarding person-centered service and support plans that reflect what is important to the individual. The final revisions to § 441.301(c)(1) (proposed § 441.301(b)(1)(i)(A)) will require that a written services and support plan be based on the person-centered approach. This provision includes minimum requirements for this approach.

At § 441.301(b)(1)(i)(A) we proposed that a state request for a waiver must include explanation of how the state will use a person-centered process to develop a written services and support plan, subject to approval by the Medicaid agency. We received 286 comments about person-centered planning, most indicating how important it is to individuals that HCBS are provided in a manner that supports their values and preferences, rather than to satisfy an impersonal or provider-centered plan of care. In the comments immediately below we outline the suggestions that do not directly affect the regulatory language, and indicate in some cases where we will consider these ideas in developing future guidance. Comments that pertain to the proposed regulation language will be considered in more detail, under the corresponding section of proposed text.

*Comment:* Many of the comments had to do with effective methods for conducting an individual person-centered planning meeting. While some commenters seemed to favor requiring certain features, a variety of commenters made the opposite general point, cautioning that too many or overly specific requirements would cause the process to become bureaucratic instead of personal. Comments that specific proposed provisions are too prescriptive are noted in those sections below. A few commenters agreed with the concept, but not the language of the proposed person-centered planning rule. They suggested replacing the entire person-centered planning section with the language ''contemporary, promising practices that result in consumers having control over the services, resources, and planning of their lives.'' Finally a few commenters believe that the proposed changes implement a ''one size fits all'' ideology.

*Response:* States administer Medicaid and have flexibility in how federal Medicaid requirements are implemented. Therefore, the language we are including in the final rule expresses what must occur rather than how. The federal regulations set the requirements and minimum standards for an activity. We may issue, as needed, additional guidance to states to assist in the interpretation and implementation of the rule.

*Comment:* Some commenters requested general clarification of terms and illustration by example. Specifically, commenters presented questions around how person-centered planning is to be implemented and whether any substantive rights are established for the individual.

*Response:* Examples and other explanations are generally included in the preamble to a notice of proposed or final rulemaking rather than in the regulation text. The commenter is correct that beyond the requirements in subparagraph (A) we do not specify how the planning process is to be implemented, for the reasons given immediately above. The commenter did not specify the particular rights of concern, so we cannot respond specifically to that issue. We consider the requirements outlined here to confer to individuals the right to a person-centered service plan, and a planning process, that meets these requirements. Individuals also have other rights under different authorities, which do not rely on this regulation. For example, civil rights against various forms of discrimination are protected under the ADA and elsewhere. CMS regularly works with the HHS Office for Civil Rights, Department of Justice (DOJ), and others to assure that we address civil rights issues as they bear on Medicaid requirements.

*Comment:* Many and varied commenters suggested that CMS make person-centered planning requirements consistent across all the authorities in which HCBS may be offered, such as the new Community First Choice program and the State Plan HCBS benefit. Specific language from proposed rules for those authorities was recommended.

*Response:* We agree that person-centered planning, as well as other HCBS requirements, should be consistent across authorities. In response to comments, proposed rules for some HCBS authorities have been published in the last several years, reflecting development in the concept of person-centered planning. We are working to bring all rules into harmony. We do point out that rules reflect the nature of the service—for example, planning for Community First Choice involves the plan for that particular service, and may not involve some of the program elements of a section 1915(c) of the Act HCBS waiver. We will endeavor to make the requirements parallel across authorities; however, they may not be identical due to some statutory differences.

*Comment:* A variety of commenters requested that the planning process consider the needs of individuals more than satisfying regulations or ''paper-completion.'' Many asked that the regulation focus on outcomes, not process.

*Response:* We agree that the planning process should not be about filling out forms. The final rule requires actions and outcomes that result in a very active process and an individualized plan that is not focused on paper completion. We also note that the degree to which the process achieves the goal of person-centeredness can only be known with appropriate quality monitoring by the state, which should include substantial feedback provided by individuals who received or are receiving services.

*Comment:* A commenter believes that these requirements will be very expensive for states to implement because of added staff and IT system costs. The requirements should take into account states' current budget problems.

*Response:* States are currently required to develop a plan of care sufficient to meet HCBS waiver participants' assessed needs for health and welfare. We do not believe the provisions in these regulations will significantly increase burden and note that investment in effective information technology, with federal financial participation, will increase efficiency.

In § 441.301(b)(1)(i)(A)(1) through (7), we proposed requirements for the Person-Centered Planning Process. Following are general comments we received on these requirements.

*Comment:* Several commenters objected to the term ''plan of care,'' which they believe dismisses active person controlled service planning, and would prefer something about outcomes.

*Response:* The regulatory text reads, ''. . . . a written person-centered service plan (also called plan of care) that is based on a person-centered approach. . . .'' The term plan of care is widely used, and reflected in waiver application documents. We indicated parenthetically that we are not referring to another separate process, but to that function we have until now called plan of care. While we do not agree that either term necessarily implies lack of individual control, we agree that ''person-centered service plan'' is superior because it is less medical in connotation and conveys that it is a plan for long term services and supports and it is developed with a person-centered process. We will change the term ''plan of care'' to ''person-centered service plan.'' Also, as noted in more specific comments below, many commenters wanted stronger language about the individual leading the process. We believe the phrase ''led by the individual'' clearly indicates that the individual is leading the process; however, we have further revised the language to read ''led by the individual receiving services and supports'' instead of ''led by the individual receiving services.'' Throughout the rest of the section, we will change any references to ''services'' or ''supports'' to ''services and supports.''

*Comment:* Some commenters objected to mandating person-centered planning on two grounds: some individuals may not want it, and some individuals may not be able to do it. They believe that CMS was assuming both interest and ability would be present in all HCBS participants. Some commenters listed specific disabilities they believe limit cognitive or expressive ability to such an extent that the individual could not lead the process.

*Response:* With regard to the issue of choice, the regulation language does not require individuals to be more involved than they choose to be in their own planning processes. Individuals may decline to participate in the process if they so choose. Regarding the issue of ability, we noted that commensurate with the level of need of the individual, the person-centered service plan must reflect the service and support needs as identified through a person-centered functional assessment. Individuals may select another person(s) to assist or represent them in the process. In addition, where state law confers decision-making authority to a legal representative, such as a guardian, that individual may direct the person-centered planning process on behalf of the individual.

Following are the comments we received on § 441.301(b)(1)(i)(A)(*1*) of the proposed rule, which is § 441.301(c)(1)(i) of the final rule.

*Comment:* Quite a few commenters urged that the individual be allowed to choose who attends the meeting. Many stated that a person-centered service plan should provide freedom from unwanted intrusion in preferences and choices which could be from family, providers and professionals, or others. In other words, the individuals should have ''veto power.''

*Response:* We believe the language in the final rule clearly indicates that individuals are allowed to choose who does or does not attend the meeting; we are therefore retaining the proposed language.

*Comment:* Most of the comments about assuring that certain persons could be present concerned the role of guardians and legal representatives or chosen surrogates. Some wanted these terms defined and roles specified, especially ''legal'' representative and attorneys. Others wanted to be sure that the rule allows for representatives who are not a legally designated representative, but might be a family member, friend, advocate, or other trusted person chosen by the individual. Another asked for a statement that a public guardian may not act as the designated representative due to the inherent unavoidable conflict of interest. Several commenters believed that the participation of various surrogates would result in them, not the individual, leading the planning process. A few also asserted that parental and guardian authority prevents abuses by professionals in the person-centered planning (PCP) process. A few commenters believed that the proposed rule reduces the authority of a parent or guardian in the PCP process, as the Medicaid manual previously entitled them. Several other very specific suggestions were made for requirements applicable to representatives.

*Response:* Our omission of explicit mention of representatives and other surrogates was not intentional and did not signal any intention to exclude them from among those whom individuals may choose to include in planning. Any references in this rule to ''individuals'' include the role of the individual's representative. We are aware of the essential role that representatives, guardians, and family members play in the lives of some individuals with receiving Medicaid HCBS. We are also aware of the published literature on the problem and conflicts of interest that occur, particularly with publicly appointed guardians in some jurisdictions. We proposed in § 441.301(b)(1)(i)(A)(*5*) a process for identifying and resolving conflicts of interest. We do not agree with those who expressed the belief that guardians would lead the planning process, instead of the individual. Though we recognize that some individuals without receptive or expressive communication depend on others to determine and articulate their needs, we will continue to speak of the individual as being in the center. Therefore, we have revised the rule to clarify the expectation that the individual will lead the planning process where possible and that the legal representative should have a participatory role, as needed and as defined by the individual, unless state law confers decision-making authority to the legal representative. We note that the term ''individual's representative'' is also defined under 1915(i) State plan HCBS regulations at § 441.735 of this rule, and further note that this rule does not abridge the legal authority of a parent or legal guardian.

*Comment:* Two commenters stated that CMS appears to attempt to regulate

unpaid family members and friendly volunteers by including them in the rule. Another concern is that including lay persons could violate confidentiality protections for the individual.

*Response:* We do not agree that the rule inadvertently regulates unpaid participants in the planning process in a general or undesirable manner. Rather, we intend that individuals have a meaningful choice of who can assist them in the planning process. We also see no reason to believe that states will relax their responsibility to protect client confidentiality in this process. The individual chooses who participates in the planning process, and thus retains direct control over who has access to private information.

Following are the comments we received on § 441.301(b)(1)(i)(A)(*2*), which is now § 441.301(c)(1)(ii) of the final rule.

*Comment:* Commenters pointed out that the proposed language is ambiguous. Several commenters recognized the intent of the proposed regulation to strengthen the person-centered service plan development process, but were concerned that the language undermines the progress made to empower people with disabilities in their planning process. Commenters expressed concern that playing a ''meaningful role'' is not the same thing as authority for decision making. Several comments indicated a belief that at least some HCBS participants cannot lead or even contribute to the service plan; several specifically mentioned people with intellectual disabilities or dementia. A few suggested specific supports, such as decision making tools and communications support.

*Response:* We do not intend a shift from the individual directing the process. We agree that the language should be clarified. ''Meaningful'' is a subjective standard. We will clarify that the person-centered planning process provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions. We believe the language ''to the maximum extent possible'' reflects the level at which the individual desires or is able to participate. We believe that with skillful facilitation, individuals can express themselves to their fullest extent.

Many commenters urged us to favor empowering the individual; others urged empowering those who believe they have the best insight into the individual's needs and wishes. The regulation does not put these interests in competition. This final rule requires a process that puts the individual in the center, driving the process to the extent feasible, and recognizes the other persons' insights into the individual's strengths, needs, and preferences. The supports help to identify and sort out differing views among those present. At § 441.301(c)(1)(v) we discuss further the role of the facilitation process in managing disagreements and the inherent differences in self-interest present in any diverse team.

We agree that some of the specific types of support commenters suggested will be valuable for some individuals, but we do not prescribe in regulation all the specific supports that can be offered. These vary according to many factors including the type of disability.

We have revised this final rule to read: ''Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.''

*Comment:* We received a few comments expressing opposite views on professionals participating in the planning. Two commenters did not believe that a planning process can include professionals and be person-centered because the individual will not direct the process. Others requested adding a provision to assure that the planning process is facilitated by a professional trained and skilled in person-centered planning techniques, possibly an independent facilitator.

*Response:* Person-centered service planning is a complex concept and requires both commitment and skill to implement. We agree that if professionals take control from individuals in the planning process, the requirements of this rule will not have been met. We do not agree that it is impossible for professionals to participate in the process appropriately. Indeed, as in many professional disciplines, the values, ethics, and the evolution of best practices in the profession offer the best means of consistently implementing a process that supports and serves the individual. We require that supports be available to assist all individuals in leading the planning process, and sometimes those supports include professionals skilled in facilitation. We believe the revised language is sufficiently clear in that it states an outcome—the individual directs the process, with supports if needed.

Following are the comments we received on § 441.301(b)(1)(i)(A)(*3*), which is now § 441.301(c)(1)(iii) of the final rule.

*Comment:* We received relatively few comments in response to this provision. Some commenters stated that the time and location preference only belonged to the individual, or that it should occur only in the individual's home, while others pointed out that the logistics should be negotiated with all participants. Some wanted more specificity, including whether the process must always be face to face; others believe the rule to be too prescriptive. We also address here a comment that the rule lacks any requirement for timeliness.

*Response:* As proposed, the regulation text aims to address a problem significant numbers of waiver participants may have experienced: that the planning process is scheduled entirely at the convenience of the state and/or provider agency. This language is silent about the convenience or preference of other participants, and we do not agree that silence precludes taking these and other factors into account. We agree that timeliness is important. When individuals rely heavily on services and supports, waiting to update a plan in response to a changed need could be a significant hardship or even a danger. Because the need for planning can range from urgent to optional, we do not believe it is appropriate or helpful to specify time frames in regulation. However, we are revising this provision in the final rule at§ 441.301(c)(1)(iii) as follows: ''Is timely and occurs at times and locations of convenience to the individual.''

Following are the comments we received on § 441.301(b)(1)(i)(A)(*4*), which is now § 441.301(c)(1)(iv) of the final rule.

*Comment:* Several commenters suggested that the regulation be more specific and more clearly articulate and strengthen ''cultural considerations,'' include more detailed state responsibilities, and offer translation services in the individual's first language. No comments objected to this provision specifically.

*Response:* We have added text to specify that a State's waiver request include how the person centered planning process is accessible to persons who are LEP and persons with disabilities, consistent with the Medicaid programmatic accessibility provision at § 435.905(b).

Following are the comments we received on § 441.301(b)(1)(i)(A)(*5*), which is now § 441.301(c)(1)(v) of the final rule.

*Comment:* Several commenters asked that we clarify this statement, including how to implement it and the types of conflict anticipated. Many comments

suggested types of disagreement or conflicts of interest to address, including interpersonal disagreement, denial or reduction in service, failure to implement the plan or comply with regulations, and whether providers have an inherent conflict and should not be present.

*Response:* We do not think that additional clarification is appropriate in the regulation. Furthermore, states can exercise multiple strategies to comply with this requirement.

We note that some commenters confused a provider being in attendance with a provider being in charge of the process or the plan. The latter (a provider being in charge of the process or plan) is not appropriate; the former (the provider being in attendance) depends on the circumstance and is not a matter subject to blanket requirements. Individuals may choose, or not, to include a provider of service in the planning team. In some situations a direct care worker or a therapist has worked so long and closely with the individual that his or her perspective is very important. Also, some providers point out that they should be able to voice any limits in what they can provide, so that a plan for someone with intense need does not commit providers to services they are not able to provide. In other situations, for example, if the individual is anxious about repercussions from voicing problems, or has a tendency to defer to a provider, that provider's presence would be detrimental. Clearly some actions, such as intimidating the individual, are unacceptable.

We do not believe it is possible to define more specific conflict of interest requirements that would be meaningful in the variety of arrangements currently used to develop person-centered service and support plans. We have strengthened the language by requiring that the state devise clear conflict of interest guidelines addressed to all parties who participate in the planning process.

*Comment:* Several commenters asked to strengthen the provision by requiring case managers to be independent of any service provider, as an assurance that the individual's goals and services will be appropriate, and will reduce actual or potential conflicts of interest. Others indicated that we do not define conflict of interest.

*Response:* We agree that complete independence of the person(s) facilitating the planning process is important to promote the statutory objectives. In the final rule, we have added an additional requirement to the person-centered planning process at § 441.301(c)(1)(vi) to address conflict of interest.

Following are the comments we received on § 441.301(b)(1)(i)(A)(*6*), which is now § 441.301(c)(1)(vii) of the final rule.

*Comment:* One commenter stated that current overarching Medicaid regulations already require full freedom of choice of qualified providers and CMS requires that states document that individuals have been offered freedom of choice. This is duplicative.

*Response:* The regulations at § 431.51 describe the various statutory bases for the free choice of provider, and specify the requirements and exceptions to the principle. The phrase ''full freedom of choice,'' however, is not from existing regulation. We assume the commenter's reference to a documentation requirement pertains to the section 1915(c) of the Act requirement that waiver participants be offered the choice of institutional alternatives to HCBS options in the waiver, which is unrelated to being informed of non-institutional service alternatives. Some persons with disabilities and their advocates have described the experience of ''choice'' in long term services and supports as being considerably different than that of a Medicaid beneficiary looking through a list of participating acute or general health care providers. We believe that a person-centered planning process should include providing the individual information about the services and supports relevant to their particular needs and goals.

*Comment:* Individuals receiving long term services and supports and their families discussed the experience of both being presented with options and not being given choices. Comments noted that individuals wish to be respected and offered choices, rather than others deciding what may be best for them. On the other hand, being presented with an exhaustive list of theoretical options and a directory of providers is overwhelming and not very useful, a familiar experience to many people negotiating a new health care need. One comment stated, ''Ensure the person has the support he or she needs to understand all of the choices and options, their rights, and what they are agreeing to.'' Some commenters suggested adding the word ''informed'' before ''choices,'' as this would be more consistent with the ADA.

*Response:* We agree that it is difficult to articulate a rule that ensures a perfect balance between too much and too little information. We believe that taken as a whole, the requirements in this final rule make clear that the process of planning services and supports puts the person at the center of a highly individualized process. We agree with the suggestion to change ''Offers choices'' to ''Offers informed choices.'' Individuals should be informed of all the possibilities from which they may choose, as well as the consequences of those choices, in a manner that is meaningful to the recipient and easily understood.

*Comment:* Several suggestions were made regarding specific issues or special circumstances regarding individual choice, including documentation of court orders or other legal issues, identification of rights, and linkage to entitlements or resources other than Medicaid.

*Response:* These suggestions appear to be good practices, but too detailed for regulation. We will consider them in the context of our ongoing efforts to provide information about best practices.

Following are the comments we received on § 441.301(b)(1)(i)(A)(*7*), which is now § 441.301(c)(1)(viii) of the final rule.

*Comment:* Two commenters pointed out that ''as needed'' may or may not include periodic scheduled updates, and does not address the timeframe within which a requested update be accomplished. They suggested changing the language to: ''Include opportunities for periodic and ongoing plan updates as needed and/or requested by the individual and a time frame for reasonably scheduling meetings requested by the individual.'' One suggestion was to define timeliness in terms of the individual's goals. Another asked to make explicit that all individuals participating in the planning process be contacted so that they can be kept up to date.

*Response:* This section proposed a process requirement, having to do with informing the individual about what steps to take to schedule an update to the plan. We do not address timeliness regarding the response to request, as we are not able to set a single national standard that would be applicable across all HCBS waivers in the country. States must respond to urgent needs more quickly than to other types of requests, in order to meet the health and welfare requirements of the HCBS waiver program. States could accomplish this through an expedited process. Requiring that plan participants be notified when an update is scheduled has merit. However, given the requirements concerning who participates in the plan, who should sign the plan, and who should have copies of the plan, we cannot construct a notification policy that respects the various levels of confidentiality and

disclosure that may be required in some cases. At this time we believe that the individual or individual and representative should control notification about updates, consistent with the control they have under item (1) over who participates in the planning process.

b. Person-Centered Service Plan § 441.301(c)(2) (Proposed § 441.301(b)(1)(i)(B))

At § 441.301(b)(1)(i)(B) we proposed that the Person-Centered Service Plan must include specific content. After further review, we believe the requirement at § 441.301(b)(1)(i)(A)(*3*) regarding timeliness and this requirement at § 441.301(b)(1)(i)(A)(*7*) regarding a method for individuals to request updates to the plan are sufficient and respectful of the individual's timeframe as reflected in the person-centered planning process. Therefore, we are removing the requirement at § 441.301(b)(1)(i)(A)(*3*) regarding a timeline for review because this will now be addressed through the requirements at § 441.301(c)(1)(iii) and (c)(1)(viii)).

Following are the comments we received on § 441.301(b)(1)(i)(B)(*2*), which is now § 441.301(c)(2)(iii) of the final rule.

*Comment:* A commenter stated that a ''person-centered functional assessment'' is superior to a disability or diagnosis-based assessment. Another pointed out that ''person-centered functional assessment'' is not recognized terminology and suggested ''individual assessment appropriate to the age and circumstances of the person'' instead.

*Response:* We agree with parts of both comments. Applying ''person-centered'' to ''functional assessment'' is incorrect. Although in a general sense all long term service and support activities are to be centered on the person and not the provider, a functional assessment is objective. We also agree with the comment that ''functional'' assessment imparts an important distinction from other forms of evaluation such as diagnostic assessment. We therefore modify the proposed language to ''through an assessment of functional need.''

Following are the comments we received on § 441.301(b)(1)(i)(B)(*3*), which is now § 441.301(c)(2)(iv) of the final rule.

*Comment:* A commenter pointed out that there is no specific mention of mental health. Many comments in various sections mentioned that the rule should focus on outcomes.

*Response:* We agree with both observations. We recognize that we cannot provide an exhaustive list to reflect an individual's identified goals. Therefore, we are removing the examples and we are revising the final rule at § 441.301(c)(2)(iv) by adding ''desired outcomes.''

*Comment:* Related to the proposal to define home and community-based settings, we received many suggestions that the person-centered plan address the issue of housing and living arrangement in a definite manner. The proposed list of example goals included ''community living'' but this was not believed to sufficiently capture the complexity of housing and services issues.

*Response:* We appreciate the thoughtful comments and agree that this important subject warrants a separate item in the list of the plan content. We will add a new requirement at § 441.301(c)(2)(i) to read: ''Reflect that the setting in which the individual resides is chosen by the individual The state must ensure that the setting chosen by the individual is integrated in, supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.''

Following are the comments we received on § 441.301(b)(1)(i)(B)(*4*) which is now § 441.301(c)(2)(v) of the final rule.

*Comment:* We received few comments on this requirement. One commenter suggested replacing this language with ''Respect and honor the choices made by the individual regarding supports.'' Another suggested adding the ''full range'' of services and supports. Others commented on or requested clarification about unpaid services, or urged us to clarify that unpaid services must not be required.

*Response:* We believe that natural supports and other unpaid services must be included in order to have a comprehensive plan reflecting all the services and supports required. The availability of unpaid supports may change from time to time and the plan must be written so as to be able to adjust the proportion of formal and informal supports without starting over at assessment. The planning process must not compel unpaid services. We have included the term ''natural supports'' in the regulation text at § 441.301(c)(2)(v) and have added the following sentence: ''Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of section 1915(c) HCBS waiver services and supports.'' We do not believe other wording suggestions are required to achieve the intended meaning.

Following are the comments we received on § 441.301(b)(1)(i)(B)(*5*), which is now § 441.301(c)(2)(vi) of the final rule.

*Comment:* Comments supported the proposed language. We choose to address here similar comments on several sections of the proposed rule. Some commenters were concerned that in taking care to protect freedoms, the regulation did not provide for reducing risk due to certain kinds of disabilities. Dementia was mentioned most often, with many examples of why some believe individual freedoms may need to be curtailed to prevent wandering, injury with cooking equipment and so on.

*Response:* Based on the comments received, we conclude that additional language is needed to ensure that reducing risk for individuals receiving Medicaid HCBS does not involve abridgement of their independence, freedom, and choice either generally or at the spontaneous decision of persons providing services and supports. Restricting independence or access to resources is appropriate only to reduce specific risks, and only when considered carefully in the person-centered service plan. The person-centered planning process required in this regulation will engage the individual and others involved in the planning process as fully as possible in making these difficult but necessary decisions. As comments indicated, there may be a need for immediate action in emergent or changing circumstances—that is the purpose of backup strategies. In thinking through risk, the planning team will identify temporary measures to be used if needed, and then update the plan when needs have stabilized. Back-up strategies are to be individualized to the unique mix of risks, strengths, and supports represented by each waiver participant. We will articulate this in the final rule by amending the language at § 441.301(c)(2)(vi) to read: ''Reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed.'' We have also added at § 441.301(c)(2)(xiii) that any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan, and specified what must be documented in

the person-centered service plan in these instances.

Following are the comments we received on § 441.301(b)(1)(i)(B)(*6*), which is now § 441.301(c)(2)(ix) of the final rule.

*Comment:* Many comments on this requirement addressed the variety of persons who may be involved in formulating the plan and in carrying it out, any of whom may have complex relationships with the individual and each other. Some comments were primarily concerned with being inclusive, and in clearly communicating the plan for services to all involved; they noted that a person-centered plan is only effective if the people providing supports know what is included in the plan. Other comments were primarily concerned with privacy and control over personal information, noting that it is inappropriate to have an individual commit intimate details to paper (such as goals, hopes for personal relationships, etc.) and then require everyone involved in that person's care—no matter their role—to read, sign, and keep a copy. Many comments dealt with both signing and distributing the plan, but we address these comments separately.

*Response:* In response to the commenters' concerns about privacy and control over personal information, we have clarified in the final rule who will sign the plan and who will receive copies of the plan by revising § 441.301(c)(2)(ix)) as follows: ''Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.''

Following are the comments we received on § 441.301(b)(1)(i)(B)(*7*), which is now at § 441.301(c)(2)(vii) of the final rule.

*Comment:* The few comments received supported the proposed language and went on to suggest specific examples, including making use of interpretation and translation, customized communication supports, in a format that is easily understood by the individual (Braille, ASL video, diagram/pictures, etc.), and taking enough time for decision making.

*Response:* As with some other requirements in this rule, we appreciate the examples given, but we do not think that CMS can list in regulation all the possible specific methods and tools to accomplish the desired outcome. For clarity purposes, we have added the term ''supports'' to this requirement.

Following are the comments we received on § 441.301(b)(1)(i)(B)(*8*).

Most of the comments we received on this proposed requirement were more applicable to other requirements and are summarized under those headings. The requirements at § 441.301(c)(1)(iii) regarding timeliness and the requirements at § 441.301(c)(1)(viii) regarding a method for individuals to request updates to the plan are sufficient and respectful of the individual's timeframe as reflected in the person-centered planning process. Therefore, we are removing this proposed requirement from the final rule. We did not receive comments on the proposed requirement at § 441.301(b)(1)(i)(B)(*9*), and adopt it in the final rule at § 441.301(c)(2)(viii).

Following are the comments we received on § 441.301(b)(1)(i)(B)(*10*), which is now § 441.301(c)(2)(x) of the final rule.

*Comment:* Many of the comments on this proposed requirement are also related to § 441.301(b)(1)(i)(B)(*6*), regarding who must sign the plan. Comments offered unique to the issue of distribution include suggestions of specific parties who should get copies of the plan and suggestions for case recordkeeping, including court or legal documents. Commenters also inquired whether distribution meant to every entity (for example, a company providing long term services and supports to the individual), or also given to every individual from that entity (for example, every direct service worker).

If the latter, concerns were expressed that parts of a true person-centered plan include very personal information, as required in § 441.301(c)(2)(iv) above—such as the individual's needs, aspirations, and even complaints—making it inappropriate to distribute the plan to everyone (that is, a housekeeper does not need to know about an individual's relationship goals).

*Response:* We appreciate the comments on this section of the rule. The language in the final rule specifies that the person-centered service plan will be distributed to the individual and other people involved in the plan. We have also revised the language in the final rule at the § 441.301(c)(2)(iv) to remove the examples and added the term ''desired outcomes.''

Following are the comments we received on § 441.301(b)(1)(i)(B)(*11*), which is now § 441.301(c)(2)(xi) of the final rule.

*Comment:* Some comments discussed ''self direction'' or ''participant direction,'' which while they sound similar to ''person-centered'' are terms of art for a different concept, a method of managing long term services and supports in which the individual assumes employer authority and/or manages a budget for the services and supports. A few comments discussed the distinction, while a few were confused by these concepts.

*Response:* Amendments to this regulation do not specifically address the issue of self direction. We issued extensive sub-regulatory guidance and technical assistance on self direction of services, to which we refer these commenters. We agree with commenters who pointed out the importance of a person-centered planning process in implementing self direction of services, and believe that the requirements in this rule will facilitate self direction and other complexities in planning long term services and supports.

*Comment:* Several commenters stated that this requirement is unclear. One commenter thought the proposed regulation would require self direction for all participants.

*Response:* We have clarified that the person-centered service plan covers all aspects of services and supports, including self direction where applicable, by rewording the text as follows: ''Include those services, the purpose or control of which the individual elects to self-direct.''

Following are the comments we received on § 441.301(b)(1)(i)(B)(*12*), which is now § 441.301(c)(2)(xii) of the final rule.

*Comment:* One commenter stated that the funding for identified supports needs to be in place for the plan to be implemented. Two other commenters asked us to clarify that the full range of services authorized by statute and included in the state's waiver proposal be made available to program participants.

*Response:* These observations about providing all needed care are the logical complement to the proposed language about unnecessary care. Taken together they address proper utilization of services. We agree that states must provide needed services to an eligible individual enrolled in the waiver. We believe the current language appropriately indicates that needed services must be provided, while unnecessary or inappropriate services should not; however, we have changed the term ''care'' to ''services and supports.''

*Comment:* One commenter found this language to be ambiguous because ''prevent'' is imprecise. Services should not be unnecessary or inappropriate.

*Response:* This requirement does not imply that the waiver offers services that are inherently inappropriate or unnecessary. It refers to the possibility

that particular services, or that the scope or frequency of them, may be inherently inappropriate or unnecessary for a given individual, especially as the individual's situation changes. One of the purposes of any service plan for health or long term care services is to specify the services a particular individual requires. There is no legitimate advantage to the individual or to Medicaid in providing unneeded services. However, some states or particular programs have historically had difficulty controlling utilization; individuals may all be given the maximum scope or frequency of service. We think that with the addition noted in the response above, the existing language adequately conveys the concept of appropriate utilization.

*Comment:* Some commenters asked that the rule include a reference to the ''most integrated setting appropriate'' standard. Two commenters consider this the most important aspect of the person-centered service plan. Many commenters of all types stated that person-centered planning should promote choice. However, regarding settings there was less agreement on what choices should be offered. Many who were concerned about preserving their present setting suggested they should be allowed to choose to live wherever they wish, and not have their current choice removed by a government policy.

Other commenters addressed the process of choice. They agreed with the planning process as proposed and stated that setting should be addressed, in terms of the individual's needs and goals. They asked that in the planning process no types of residential provider or housing options being offered to section 1915(c) of the Act HCBS waiver participants be omitted from the discussion. They and some others also suggested that this subject could be raised at regular intervals when appropriate, as the person centered service plan is updated. Their position was that competition among providers of residential settings for waiver participants is a good thing and will promote growth of the types of settings CMS seems to want to encourage, but will only work if it is a fair competition with all approved settings presented neutrally to the individual.

Some comments about settings in person-centered planning had more to do with the definition of setting than with the planning process.

*Response:* We agree that the setting options in which an individual resides should be an element in the person-centered service plan. We have included it as a separate item under the list of ''Person-Centered Planning Process'' requirements at § 441.301(c)(1)(ix). It reads: ''Records the alternative home and community-based settings that were considered by the individual.'' We respond to all of the setting issues, such as landlord/tenant relationship, in our discussion of that section of the rule. As all the comments on this subject make clear, the process of choosing among the housing and service options actually available to a particular waiver participant is an extraordinarily multi-faceted issue. A truly person-centered planning process as required in this rule is the best venue for facilitating this important choice.

We also agree that part of meaningful choice is to be presented with all available options. A person-centered planning process is not about promoting certain options deemed to be more ''person-centered'' or otherwise desirable, than other options. A person-centered process is one that puts the individual in the center, facilitated to make choices that may be agreeable or disagreeable to some participating in the process.

Therefore, we will require that the process of informed choice be documented. Best practices that develop will inform future policy. A new provision has been added at § 441.301(c)(2)(i) to read: ''Reflect that the setting in which the individual resides is chosen by the individual. The state must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.''

*Comment:* One commenter stated that CMS should use the person-centered plan to ensure community integration.

*Response:* We agree that one of the essential purposes of the person-centered service plan is to ensure community integration. In the regulation at § 441.301(c)(4)(i) we have clarified that home and community-based settings must be integrated in, and that individuals have full access to the greater community.

*Comment:* Other commenters offered specific additions to the proposed rule that we considered but found to be either too prescriptive or too detailed to require in regulation. For example, one commenter urged CMS to establish benchmarks in the rule, as a requirement for states to receive FFP for person-centered HCBS waivers.

*Response:* Many of these comments reflect good practice in administering services. We believe that states have both sufficient incentive and practical experience to be following such practices. Where they are not, we offer a variety of technical assistance services to state agencies, at no charge, to assist with these sorts of practical strategies. We find this approach more productive and flexible than specifying detailed regulations for operating the program. In addition, some of these suggestions we have addressed in sub-regulatory guidance such as instructions for the section 1915(c) waiver application, letters or bulletins to State Medicaid directors, and other vehicles.

*Comment:* One commenter recommended that CMS include specific language in the final rule that updates to person-centered service plans must be completed within a sufficient timeframe to meet the individual's goals.

*Response:* Person-centered service plans must be reassessed at least annually, and more frequently if the condition of the individual changes, as indicated in§ 441.365(e).

2. HCBS Settings § 441.301(b)(1)(iv) (final § 441.301(c)(4))

Through the proposed rule, we proposed to clarify and sought public input on how to define the characteristics of home and community-based (HCB) settings where waiver participants may receive services. In new paragraph, § 441.301(b)(1)(iv), we proposed clarifying language regarding settings that will not be considered home and community-based under section 1915(c) of the Act. We clarified that HCBS settings are integrated in the community and may not include: facilities located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment or custodial care; or in a building on the grounds of, or immediately adjacent to, a public or private institution; or a disability-specific housing complex designed expressly around an individual's diagnosis, that is segregated from the larger community, as determined by the Secretary.

We noted that this rule change does not exclude living settings on tribal lands that reflect cultural norms or ALS for persons who are older regardless of disability, when the conditions noted above in the background section are met.

The clarification and request for input was partially in response to instances in

which states or other stakeholders expressed interest in using HCBS waivers to serve individuals in segregated settings or settings with a strong institutional nature, for example, some proposed settings on campuses of institutional facilities, segregated from the larger community. These settings often do not allow individuals to choose whether or with whom they share a room; limit individuals' freedom of choice on daily living experiences such as meals, visitors, activities; and limit individuals' opportunities to pursue community activities.

CMS' definition of HCBS setting characteristics has evolved over the past four years, based on experience and learning from throughout the country and feedback about the best way to differentiate between institutional and community-based care. For example, in our April 4, 2008, proposed rule, Medicaid Program; Home and Community-Based State Plan Services, (73 FR 18676), we used the number of unrelated people living together in a facility to define whether or not a setting was HCB. Our April 15, 2011,proposed rule, Medicaid Program; Home and Community-Based Services (HCBS) Waivers, (76 FR 21432), no longer included the number of residents as an HCB characteristic, but did include a detailed list of the types of settings that do not qualify for HCBS waivers because they are not integrated into the community. Based on further public comment on these proposed regulations and on the comments we received on the 1915(i) and 1915(k) proposed rule, we are moving away from defining HCB settings by what they are not, and towards defining them by the nature and quality of beneficiaries' experiences. These final regulations establish a more outcome-oriented definition of HCB settings, rather than one based solely on a setting's location, geography, or physical characteristics.

*Comment:* Many commenters believe quite passionately that public funds should only be used to support persons in ''home and community-based'' settings—not institution-like or congregate facilities. A commenter wrote, ''Please protect the interests of the disabled people of the world and stand your ground and allow HCBS funds to be used for their intended purposes.'' Another commenter stated, ''HCBS funds are limited and designed to serve specific purposes, not to be available to any and all settings which operate under the name 'community'.''

*Response:* We agree with the general statement that waiver funds should only be used for their intended purpose of supporting individuals in the community. HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule (except for HCBS that is permitted to be delivered in an institutional setting, such as institutional respite), and since the purpose of this authority is to provide individuals with HCB alternatives to institutional settings, individuals must be living in settings that comport with the HCB setting requirements as set forth in this rule. We believe the criteria set forth in the final rule will enable CMS to differentiate between HCBS settings and non-HCBS settings for funding purposes.

*Comment:* Several commenters shared the sentiment that true community integration is more than being in the community, but rather truly participating in that community through working side by side with others without disabilities in community activities, such as jobs, clubs and other civic activities.

*Response:* We agree with this comment and believe that the changes in the text of the final rule address tenets of community integration. A home and community-based setting must be integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

*Comment:* A number of individual commenters shared personal stories expressing satisfaction with their current living arrangements and displeasure that new regulations might force them to move or dictate where they should live. One person wrote, ''Please allow Medicaid waivers to continue to pay for services in planned communities similar to retirement communities. I want to live in a community with my friends.'' Another noted, ''I believe this proposed rule would . . . deny access to residential care and assisted living for those who need it most.'' Many commenters talked about the importance of retaining freedom of choice. One commenter stated, ''. . . what I am advocating is CHOICE. We should be expanding options rather than narrowing possibilities and options, and we should ask those with disabilities and their families what they want, not what others think they want.'' Finally, quite a few commenters echoed a warning to stay away from a ''one size fits all'' approach in defining HCBS and to embrace more flexibility: ''The needs and circumstances of each individual are too diverse to warrant an outright ban on HCBS funding for individuals who might need specialized care.'' They further challenged CMS that housing and setting options should not be arbitrarily limited by defining HCBS through physical and geographic structures, but rather through the person-centered plan, personal outcomes and satisfaction.

*Response:* We very much appreciate hearing personal stories as they help us better understand how our proposed actions will affect individuals receiving services under the HCBS waiver program. We believe that individual choice is important and have worked to promote choice in the final rule. In addition, it is important to note that HCBS waiver funding is only one way in which federal Medicaid finances long term services and supports; a setting that may not meet the HCB definition may still qualify for Medicaid financing, but not as a home and community based service.

We agree that the definition we included in the proposed rule for HCBS settings may have had the result of restricting the settings in which HCB waiver services can be provided in a way that we did not intend and in narrowing choices for participants. The final rule is more flexible and less prescriptive in that it does not preclude certain settings per se but rather establishes affirmative, outcome-based criteria for defining whether a setting is or is not home and community-based. The language in the final rule specifies that any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS, will be presumed to be a setting that has the qualities of an institution unless the Secretary determines, through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings. Therefore, states and others have the opportunity to refute this categorization by providing sufficient evidence that the individuals in the facility are, in fact, integrated in the community in a manner that overcomes any institutional appearance of the setting. This means

that we will continue to be discerning about what types of settings qualify for waiver funds. We are including language in the final rule that focuses on the critical role of person-centered planning and addresses fundamental protections regarding freedom, dignity, control, daily routines, privacy and community integration.

*Comment:* A number of commenters cautioned that restricting living situations reduces access to long term care in the community and may force people back into nursing facilities. They advised that CMS not include any specific restrictions on settings.

*Response:* We have made significant changes to this section of the rule, but still define general tenets and characteristics of HCBS that will preclude institutional settings from qualifying as HCB, although they might qualify for Medicaid financing under other authorities. We specifically noted that home and community-based settings do not include: ''a nursing facility; an institution for mental diseases, an intermediate care facility for individuals with intellectual disabilities; a hospital, or any other locations that have qualities of an institutional setting, as determined by the Secretary.'' Statutory requirements specify that an individual be offered a choice between services in an institutional setting or in a HCBS setting, therefore making it necessary for us to define the difference. We recognize that there are limited long-term care options in many communities and may be few alternatives beyond institutional care. However, states need to understand what qualifies as a home and community-based setting, and also understand that this might trigger change and even dislocation. To mitigate, we have developed specific provisions to allow for a transition period, for existing approved HCBS waivers under 1915(c) in accordance with section 441.301(c)(6). We will afford states the opportunity to propose a transition plan that encompasses a period up to five years after the effective date of the regulation if the state can support the need for such a period of time. States are expected to demonstrate substantial progress toward compliance throughout any transition period. For states that are submitting renewals early in the first year after this final regulation takes effect, states may submit a request for a temporary extension to allow time to fully develop the transition plan for that HCBS waiver program.

*Comment:* A couple of commenters expressed concern about negative financial impact on providers.

*Response:* We appreciate the concerns regarding service providers and wish to point out that states will have tremendous flexibility in how they design 1915(c) waivers, including how they define services, provider qualifications and service rate methodologies in their programs. The purpose of this regulation is to ensure that beneficiaries in Medicaid HCBS waivers receive services in home and community-based settings that are true alternatives to institutional settings and that states and providers have a clear understanding of how applicable definitions will be applied by us.

*Comment:* One commenter thought that privacy is already protected in administrative rules, so it is not necessary to address in this rule.

*Response:* We disagree with this comment and have included a statement in the final rule about qualities that must be included in HCBS, including the right to privacy.

*Comment:* A significant number of commenters recommended that CMS remove the entire section on HCBS settings in the proposed rule from the final rule.

*Response:* CMS has made significant changes to this section of the rule, but has not eliminated it. We have listened to the many concerns expressed by commenters regarding the description of HCBS settings and have chosen a different, more person-centered and outcome-driven approach for defining settings than what was described in the proposed rule.

*Comment:* Commenters generally liked the CMS prohibition against using HCBS waiver funds to provide services to individuals living in a setting in which they are required to receive and participate in services as a condition of continued tenancy. Further, some commenters wanted CMS to require providers to promote aging in place. They stated the need for additional qualified services and supports should not be justification for asking a person to leave a setting; however, should the person's needs exceed what legally can be provided in the setting, appropriate transfer processes and protections must be in place.

*Response:* There is nothing in this rule that negates or waives compliance with other Medicaid requirements, not specifically waived by section 1915(c) authority, such as an individual's right to obtain services from any willing and qualified provider of a service. In the final rule, we have revised § 441.301(c)(4) by replacing the language with new requirements for HCBS settings, and at § 441.301(c)(4)(v) we have included the following requirement that the setting, ''facilitates individual choice regarding services and supports, and who provides them.'' This requirement applies to all settings including provider-owned or controlled residential settings.

*Comment:* A commenter asked if people currently living in settings that do not meet the new criteria will have a grandfathering period to move out or disenroll from the waiver. Many commenters strongly encouraged CMS to allow sufficient time for states, providers, and individual waiver participants and their families to make the transition away from historic legacy settings that may not comport with the proposed rule language, in order to minimize adverse impacts on individuals and systems of services and supports. Some commenters suggested that if we consider grandfathering non-compliant programs, we should not make the grandfathered period permanent, but should only allow grandfathering of existing homes located on the periphery of a campus, but not separated by fencing or barriers.

*Response:* We understand that time is required to adjust to the new requirements set forth in the final rule. The revised language in the final rule includes the requirements for states to submit transition plans for coming into compliance for existing programs and HCBS waivers.

*Comment:* One commenter emphasized the need to involve stakeholders in dialogue as CMS moves forward on working with states to implement final regulations. Another commenter recommended that the Department of Defense have the opportunity to provide recommendations that will enhance military families' access to the waiver as they move from state to state.

*Response:* We engaged in a public input process on the 1915(c) regulation, which included both an Advanced Notice of Proposed Rulemaking (ANPRM) and the Notice of Proposed Rulemaking (NPRM), producing well over 2500 separate comments. We have taken the time to thoroughly analyze comments from a wide range of stakeholders and incorporate stakeholder suggestions in crafting the final rule. We have also reviewed comments from the proposed rules for the 1915(i) and 1915(k) programs and have incorporated suggestions into this final rule so that all three HCBS authorities are aligned. CMS is committed to working with states and providing technical assistance, as needed, with implementation of the final rule.

*Comment:* Many commenters suggested CMS clearly outline the qualities of an institutional setting in the regulatory text and not just in the preamble. One commenter proposed including a list of 12 qualities of an institution in the regulatory text.

*Response:* Rather than explicitly outlining the qualities of an institution, we have chosen to more clearly outline the qualities of home and community-based settings in the regulatory text. The final language provides a specific list of five qualities that must be present in order for a setting to be classified as home and community-based, as well as additional criteria that must be met by provider-owned or controlled settings. The final rule also notes that home and community-based settings do not include nursing facilities, institutions for mental diseases, intermediate care facilities for individuals with intellectual disabilities, or hospitals.

*Comment:* Several commenters wanted more detail in the rule defining HCBS ''settings.'' One commenter proposed that the following language be added to the description of appropriate HCBS ''settings'' in the rule: ''support exercising full rights and responsibilities as community citizens'' and ''individualized services and supports.'' Another commenter proposed a list of nine person-centered attributes that it believes should be found in all HCBS settings. The nine attributes are: core values and philosophy, relationships and sense of community, governance/ownership, leadership, workforce practices, meaningful life and engagement, services, environment, and accountability. Other commenters also provided differing views on whether sheltered workshops, adult day care services, and other congregate settings and non-residential facilities solely for persons with disabilities should be considered HCB. Some believed that the rule should exclude these settings from the HCBS definition as they still have the qualities of an institution. Others, however, believed these settings should qualify for waiver funding, stating that HCBS characteristics should not apply only to residential services.

*Response:* 1915(c) HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule. In addition, since the purpose of this authority is to provide individuals with HCB alternatives to institutional settings, individuals receiving 1915(c) HCBS must be living in settings that comport with the HCB setting requirements as set forth in this rule regardless of whether they are receiving HCBS in that residence. This is consistent with CMS' longstanding policy regarding 1915(c) HCBS.

*Comment:* Many commenters stated that they thought the regulation should specify that an HCBS setting must not be located on the grounds of, or immediately adjacent to, a private as well as a public institution.

*Response:* We appreciate the commenters' concerns. It is expected that all settings, public and private, meet the HCB setting requirements of this regulation. These final rules specifically make reference to a setting that is adjacent to a public institution in the regulation language due to public input that stressed how such settings inherently discourage integration with the broader community. We will apply heightened scrutiny to such settings because of the likelihood that they do not offer the characteristics of a home and community-based setting and hinder or discourage integration with the broader community.

*Comment:* Many commenters thought some terms in the proposed rule were vague and/or needed further defining. For example, many commenters wanted the rule to include clearer definitions for terms such as ''immediately adjacent to a public institution'' and ''housing complex designed expressly around an individual's diagnosis or disability.'' At least one commenter stated that terms like ''meaningful access'' and ''choice'' were too subjective to have a place in regulation.

*Response:* We appreciate some commenters' desires for more specific and clear definitions in the final rule, but believe that highly specific, close-ended parameters are limiting and often prove ineffective. We are instead moving towards evaluating outcomes and characteristics to determine whether or not a particular setting produces desirable outcomes—while attempting to be as clear and precise as possible in describing those outcomes and characteristics. Where appropriate, CMS has added additional specificity to the final rule.

*Comment:* Some commenters believe that ''immediately adjacent to a public institution'' was unnecessarily restrictive. In contrast, another commenter believed that use of the term ''immediately adjacent'' was not restrictive enough, as ''it could allow HCBS housing at an institution separated by a nature trail, parking lot or tree line.'' One comment included the recommendation that we add the phrase: ''or sharing common employees or management with a public institution'' after the phrase ''immediately adjacent to a public institution.''

*Response:* We believe that the process for heightened scrutiny, as described in the final rule, allows us to appropriately determine whether such settings meet the HCBS requirements. We believe this approach will allow us to take into account the kinds of issues the commenters described.

*Comment:* Several commenters believed CMS should strike the term ''custodial care'' from the rule. Another commenter wanted us to clarify whether ''custodial care'' prohibits care in foster care settings.

*Response:* We agree that the term ''custodial care'' is unclear and confusing and should not be included in the final rule. We have deleted it from the regulatory text.

*Comment:* We received many comments that certain settings—such as group homes, adult foster care, and assisted living facilities—should qualify as home and community-based because many individuals consider them to be their homes and to be a part of the community. On the other hand, we also received comments from others that these types of facilities are never appropriate as HCBS settings.

*Response:* Given the variability within and between types of housing arrangements, CMS cannot determine simply by the type of group housing, whether it complies with HCBS characteristics. As a result, particular settings, beyond those specifically excluded in the regulation text, will not automatically be included or excluded, but rather will be evaluated using the heightened scrutiny approach described in the regulation.

*Comment:* Commenters stated that the regulation should specify that a ''housing complex designed expressly around an individual's diagnosis or disability'' includes complexes that serve individuals with different diagnoses or disabilities, as opposed to just individuals with a particular diagnosis or disability. Another commenter requested a definition of a housing complex that is designed expressly around an individual's diagnosis or disability.

*Response:* We appreciated these comments, which indicated to us that the language means different things to different populations and programs. As a result of the comments we received, we have revised the rule to remove the language, ''housing complex designed expressly around an individual's diagnosis or disability,'' In the final rule, we have removed this language. The regulatory text now includes the following language: ''any other setting that has the effect of isolating individuals receiving Medicaid HCBS

from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.'' We intend to issue additional guidance to provide examples of the types of settings that will be subject to heightened scrutiny. The guidance will also specify the process we will use to determine if a setting meets the home and community-based criteria.

*Comment:* Commenters disagreed with proposed language that would exclude ''housing designed expressly around an individual's diagnosis or disability'' from the definition of an HCBS setting. They noted that certain disabled populations (such as those with brain injury and spinal cord injuries or Alzheimer's disease) require specialized facilities and care designed to meet their specific needs. Commenters stated that complexes designed around an individual's diagnosis or disability serve as alternatives to institutionalized care and allow residents to function with greater independence. We received a significant number of comments from diverse groups of individuals commenting that there are good reasons to live in residential settings specific to individuals' needs.

*Response:* As noted above, the final rule no longer includes the term ''housing designed expressly around an individual's diagnosis or disability.'' The new regulatory language is restated above. We agree that certain kinds of specialized settings may prove highly beneficial to particular populations and may be well integrated into the community. These factors will be taken into account when deciding whether or not a setting should qualify for HCBS waiver funding.

*Comment:* Some commenters asked CMS to look into HCBS settings' implications for intersection with HUD 811 and 202 projects and whether this will result in people losing housing. They encouraged CMS to look at potential conflicts with Fair Housing rules and work collaboratively with HUD and the Department of Agriculture so that we better coordinate available federally subsidized housing options with delivery of waiver services. One commenter who believed that HUD-funded independent housing should qualify stated, ''We would urge the Secretary to use her discretion to recognize that even those Section 811 housing developments that are designed 'expressly around an individual's diagnosis or disability' are often the most community-based and inclusive housing model available, and it would be illogical to deny HCBS waiver funds to support services to an individual living in such a setting.''

*Response:* We have worked closely with HUD and other federal agencies on the impact of this regulation on federally supported housing options. We believe the changes to the final rule allow for the appropriate designation of HCBS settings and for sufficient transition time for states to comply.

*Comment:* One commenter suggested that a ''home'' should not be considered ''in the community'' if more than four unrelated people live in the home.

*Response:* In the 2008 1915(i) Notice of Proposed Rulemaking, we did propose defining institutional care based on the number of residents living in the facility. However, we were persuaded by public comments that this was not a useful or appropriate way to differentiate between institutional and home and community-based care. As a result, we have now determined not to include or exclude specific kinds of facilities from qualifying as HCBS settings based on the number of residents in that facility. We have, however, established a list of specific conditions that must be met in provider-owned or controlled residential settings in order to qualify as HCBS.

*Comment:* A commenter thought CMS should not allow clusters of homes in gated communities to qualify as an HCBS setting. Others objected to classifying facilities on campus settings or farms as HCBS. On the other hand, many people supported categorizing these facilities as HCBS, noting that cluster or campus living may promote health and welfare in emergencies because of physical proximity. Many commenters expressed concern that the proposed rule would exclude rural farmsteads and farm communities for individuals with autism from receiving waiver funds. These commenters noted that rural, agricultural settings are desirable for people with autism, as they provide safe, calm environments—whereas urban settings can prove dangerous and disorienting.

*Response:* The Secretary will determine through heightened scrutiny, based on information presented by the state or other parties, whether such complexes do or do not have the qualities of an institution and whether these complexes have or do not have the qualities of home and community-based settings. We will evaluate both rural and urban settings based on whether they have the characteristics required under the regulation.

*Comment:* Several commenters suggested that CMS needed to be careful of the unintended consequences of the prescriptive language about settings in the proposed rule that would force people to move from their long term homes in the community and lose services. Some commenters stated that CMS must also be open to unique situations and different types of living situations that may be designed for people in rural areas.

*Response:* We have considered the many concerns expressed by commenters regarding the description of HCBS settings in the proposed rule. Through the final rule we have chosen a different, more person-centered, outcomes-based approach than what was described in the proposed rule in part to address concerns about unintended consequences of specific language that was used in the proposed rule about settings.

*Comment:* There were several themes that emerged amongst the many commenters who agreed with the proposed language in the rule regarding home and community-based settings. Some commended CMS for taking a stand on what comprises home and community qualities. Others appreciated that we were using characteristics that will help people truly be included in their communities and not just focusing on size or location of settings. Other commenters specifically mentioned that institutions and other congregate settings should not be a part of a waiver and should not be allowed to call themselves HCBS. Commenters agreed that use of person centered planning, flexibility regarding meals and availability of food, control over daily activities, free access to visitors and privacy are all hallmarks of community living. Individual commenters and the general public focused on the importance of using waiver funding for people with disabilities to live in the community like everyone else and not be shut away from other people.

*Response:* We concur with much of the content from these commenters. Through the final rule we have chosen to take a somewhat different approach from what was described in the proposed rule in order to address the different commenters with divergent views on this issue. Specifically, we have chosen to be somewhat less prescriptive regarding physical and geographical characteristics of settings and to focus instead on the critical role of person-centered service planning

and on characteristics that are associated with independence, control, daily routines, privacy and community integration. Further, with respect to certain types of settings, the final rule specifies that the Secretary will determine through heightened scrutiny, based on information presented by the state or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

*Comment:* One commenter suggested that the proposed language runs counter to consumer choice, would restrict important specialized programming, and is counter to the entire course and direction of the waiver program recommending that CMS delete the proposed section in its entirety and begin anew by convening stakeholders to discuss this critical definition. The commenter added that these conditions are a first attempt to regulate federally the assisted living environment which could and should remain at the state level.

*Response:* This rule applies to all settings where individuals are receiving HCBS and does not single out assisted living environments. It is intended to assure, consistent with the statute, that Medicaid financing provided through HCBS waivers is available to participants who are receiving services in settings that are true alternatives to institutional care.

3. Target Groups § 441.301(b)(6)

Under section 1915(c) of the Act, the Secretary is authorized to waive section 1902(a)(10)(B) of the Act, allowing states not to apply requirements that the medical assistance available to categorically-eligible Medicaid individuals must not be less in amount, duration or scope than the medical assistance made available to any other such individual, or the medical assistance available to medically needy individuals. We have interpreted this authority to permit States to target an HCBS waiver program to a specified group of individuals who would otherwise require institutional care. A single section 1915(c) waiver may, under current regulation, serve one of the three target groups identified in § 441.301(b)(6). As provided in the rule, these target groups are: ''Aged or disabled, or both; Individuals with intellectual or developmental disabilities, or both; and Mentally ill.'' States must currently develop separate section 1915(c) waivers in order to serve more than one of the specified target groups. A federal regulatory change that permits combining targeted groups within one waiver will remove a barrier for states that wish to design a waiver that meets the needs of more than one target population.

This regulatory change will enable states to design programs to meet the needs of Medicaid-eligible individuals and potentially achieve administrative efficiencies. For example, a growing number of Medicaid-eligible individuals with intellectual disabilities reside with aging caregivers who are also eligible for Medicaid. The proposed change will enable the state to design a coordinated section 1915(c) waiver structure that meets the needs of the entire family that, in this example, includes both an aging parent and a person with intellectual disabilities. In this illustration, the family currently would be served in two different waivers, but with the proposed change, both could now be served under the same waiver program.

The revisions to § 441.301(b)(6) will allow states, but not require them, to combine target groups. Under this rule, states must still determine that without the waiver, participants will require institutional level of care, in accordance with section 1915(c) of the Act. The regulation will not affect the cost neutrality requirement for section 1915(c) waivers, which requires the state to assure that the average per capita expenditure under the waiver for each waiver year not exceed 100 percent of the average per capita expenditures that will have been made during the same year for the level of care provided in a hospital, nursing facility, or ICF/IID under the state plan had the waiver not been granted. We will provide states with guidance on how to demonstrate cost neutrality for a waiver serving multiple target groups.

The comments provided on this provision were largely positive, advising CMS to carefully consider quality elements and protections needed to ensure that all target groups are protected sufficiently in such a structure. Through this final rule, we include the requirements that each individual within the waiver, regardless of target group, has equal access to the services necessary to meet their unique needs.

*Comment:* A theme expressed by the majority of commenters who disagreed with this provision in the rule centered around potential negative impact on consumers. These included using the combining of target groups to limit service packages, serve less people overall, limit choices and create infighting among different disability groups. Several commenters were concerned that states would make decisions based on service/cost, which may lead to less adequate services for people with disabilities.

*Response:* Challenges regarding limited resources at the state level already exist and will continue to exist whether or not a state chooses to pursue combining target populations in one waiver. This change to the regulation is not intended to have any impact on payment rates for services. To ensure transparency and input, we strongly encourage states interested in this option to consult with affected stakeholders in advance of implementation.

*Comment:* Several commenters expressed concern that combining of target groups will lead to frustration for states and cause barriers to timely innovations.

*Response:* The intention in the rule is to provide options to states that foster creativity and better integration of services across populations, which may lead to administrative efficiencies in state Medicaid agencies. The intent is not to prevent or inhibit innovation and the decision to combine target groups is optional for the state.

*Comment:* A few commenters noted that people with various disabilities, for example people with developmental disabilities, people with mental illness and frail elders, have different needs from each other and should not be residing together in housing situations. Further, they described how this can lead to dangerous situations that may threaten the well-being of more vulnerable individuals, such as frail elders when they reside with younger people with disabilities, particularly if there is any potential that such disabilities would make a person more likely to engage in any dangerous or aggressive behavior.

*Response:* The changes to this section of the regulation do not speak to combining different target groups in the same living situations, but rather to the inclusion of multiple target groups in the overall waiver design and operation. Including multiple target groups in one waiver will not alleviate responsibilities of states for ensuring the health and welfare of all participants and detailing their quality improvement strategies for that waiver. The final rule at § 441.302(a)(4) specifies that, if a state chooses the option to serve more than one target group under a single waiver, the state must assure that it is able to meet the unique service needs that each individual may have regardless of the target group.

*Comment:* A commenter recommended that if states are permitted to combine target populations

in a single waiver, CMS must expressly require a right of beneficiary choice.

*Response:* Including multiple target populations in one waiver does not change freedom of choice requirements that exist in Medicaid generally and in 1915(c) waivers specifically. Regardless of whether a state includes multiple target populations, all included services must be made available to those enrolled in the waiver who demonstrate a need for the services (as indicated in the person-centered assessment and service plan).

*Comment:* A number of commenters who disagreed with this provision responded to perceived changes that were not contemplated in the proposed rule. One commenter thought this rule would cause cost-neutrality issues between populations. Interestingly, some commenters thought the proposed rule would mandate states to combine target populations and believed it should be a state choice.

*Response:* The concern that cost neutrality would become problematic in waivers with combined target groups should not be a factor, as cost neutrality is calculated based on the relevant level of care group in the waiver, not by target population. For example, people with physical disabilities who meet nursing facility level of care would need to meet that cost neutrality level and people with intellectual disabilities would still need to meet the cost neutrality for ICF/IID level of care. In fact, multiple levels of care are an option currently in waivers where a particular target population may include multiple levels of care within the same waiver. As this choice is optional, the state will have the opportunity to submit two separate waivers if cost neutrality was not initially met with one waiver. Neither the proposed rule nor the final rule mandates states to combine target populations, but rather provides this option for states.

*Comment:* Several commenters were concerned that people who are currently receiving waiver services would lose their services if the state combined population specific waivers into one waiver that included multiple target groups. They suggested that CMS require appropriate safeguards to protect current participants.

*Response:* In an effort to ensure that safeguards are in place to protect the health and welfare of each waiver participant, the requirement in the final rule at § 441.302(a)(4) specifies that states must assure us that they are able to meet the unique service needs that particular target groups may present when the state elects to serve more than one target group under a single waiver. In the Instructions and Technical Guide for section 1915(c) HCBS waiver applications, we currently require a transition plan for waiver participants who may be adversely affected when a change through amendment, renewal consolidation, or the termination of a waiver occurs.

*Comment:* Several commenters asked for clearer expectations around quality measurement and related documentation.

*Response:* Combining waiver target groups will not alleviate responsibilities of states for ensuring the health and welfare of all participants and detailing their quality improvement strategies for that waiver. Further guidance on waiver quality improvement strategies is addressed in the Instructions and Technical Guide for section 1915(c) HCBS waiver applications. We believe there may be potential for efficiencies by having a uniform quality system in one waiver that serves multiple target populations.

*Comment:* Several commenters would like to see CMS allow states to define different services packages for subgroups within combined waivers. Other commenters asked CMS to clarify that equal access does not mean that each individual receives the same type, amount, duration or scope of service. In addition, one commenter recommended that waivers serving multiple target groups should not be required to cover the array of services specifically needed by each of the covered groups as well as generic services that will benefit all. Another commenter suggested that CMS require a common service menu for all target populations.

*Response:* States may continue to design and keep 1915(c) waivers by individual target group and not choose to combine target groups. If they combine target groups in one waiver, equal access means that all included services must be made available to those who need them (as indicated in the person-centered assessment and service plan). This does not mean that individuals with differing needs would receive the same array, amount, duration or scope of services. Nothing in the proposed or final rule changes state flexibility in choosing services to meet the needs of people in waivers.

*Comment:* Several commenters raised the issue of waiting lists and the potential to crowd out one population group due to pent up demand with long wait lists for another group; this was specifically mentioned in relation to older adults not having timely access to services.

*Response:* One of the options available to states to ensure the continuation of services to incoming multiple target groups under one waiver is to reserve capacity. Reserving capacity is only a means to hold waiver openings for the entrance of specific sets of individuals to the waiver. Capacity cannot be reserved to limit access to a specific waiver service. All individuals who enter the waiver must have comparable access to the services offered under the waiver. For example, capacity may not be reserved to limit the number of waiver participants who may direct some or all of their waiver services.

*Comment:* Several commenters pointed out that due to Medicaid's historic institutional bias, home and community-based services are still generally under-resourced relative to facility-based care. One commenter suggested that CMS not allow states to use newly combined waivers to cut back on HCBS services overall, as such a move would be inconsistent with a state's obligations under *Olmstead.*

*Response:* We intend to offer more opportunities to states to facilitate their participation in HCBS options, not to reduce states' participation in 1915(c) waivers or limit HCBS services. Further, this regulation change does not alleviate states' independent obligations under the Americans with Disabilities Act or the Supreme Court's *Olmstead* decision.

*Comment:* One commenter recommended that states be allowed the flexibility to create waivers that include hybrid care arrangements that have some institutional components.

*Response:* Since the waivers are statutorily designed for the purpose of providing HCBS as an alternative to institutional care, we disagree with this comment.

*Comment:* Several commenters agreed with this section of the rule but recommended that cost neutrality calculations be based either on combined calculations or on the target group with the higher estimated cost—not calculated separately for each population group. It was also recommended that we provide more detail on cost neutrality calculations in the regulation text, including whether states would have the option to combine populations with different institutional levels of need into one waiver. Several other commenters thought that states should be able to limit the number of waiver participants in each target group to maintain fiscal neutrality.

*Response:* Combining target groups allows states to combine people with different levels of care, for example, people with ICF/IID level of care and NF level of care, in the same waiver. Cost neutrality is calculated by level of care,

not target group. The Instructions and Technical Guide for section 1915(c) HCBS waivers provide guidance on calculating cost neutrality with multiple levels of care in one waiver. The current waiver application already prompts the user to enter costs for each level of care and then aggregates them for one combined cost neutrality test. States can choose to combine multiple target groups in a single waiver or continue to use separate waivers for each target group.

*Comment:* Several commenters shared concerns about cost limits negatively impacting particular populations by either being set too low or too high. CMS was also asked to calculate and monitor the baseline combined funding for individual populations.

*Response:* We do not believe that this change to regulation will have any impact on a state's choice to select or not select individual cost limits. We currently require states to report on funding for waiver services to ensure cost neutrality by waiver. At § 441.302(a)(4)(i), we have also included a requirement for states to report annually in the quality section of the CMS–372, data that indicates the state continues to serve multiple target groups in a single waiver and that a single target group is not being prioritized to the detriment of other groups.

*Comment:* A few commenters recommended that CMS require states to apply savings from newly combined waivers proportionately and equitably to target groups affected for the purpose of addressing waiting lists and expansion of access to waiver services.

*Response:* This comment goes beyond the statutory scope of what we can require in the context of section 1915(c) waivers.

*Comment:* A commenter asked CMS to clarify which state agency(s) will be authorized to implement the waiver (for example, state agency on aging or state agency dealing with ID/DD issues) when a state chooses to submit a combined waiver.

*Response:* In accordance with § 431.10, the Medicaid Agency is responsible for ensuring that a waiver is operated in accordance with applicable federal regulations and the provisions of the waiver itself. However, it may delegate operational activities and functions to another state agency (operating agency) to perform under the supervision and oversight of the State Medicaid Agency. Decisions around the design of waiver administrative structures rest with the state, subject to CMS requirements that the Medicaid Agency retains ultimate authority and responsibility for the operation of the waiver. Greater detail on waiver administrative structures is provided in the Instructions and Technical Guide for section 1915(c) waivers.

*Comment:* Several commenters indicated that CMS should employ the lessons learned through the Aging and Disability Resource Center (ADRC) model.

*Response:* We agree that allowing states, at their discretion, to combine target groups in one waiver is consistent with one of the principles of the ADRC model to allow a cross disability population approach, as appropriate. Further, and as some other commenters noted, it is critical that if states choose to combine target populations in one waiver, they must assure CMS that they are able to meet the unique service needs that each individual may have regardless of target group, and that each individual in the waiver has equal access to all needed services.

*Comment:* Several commenters raised clarifying questions about combining of target groups. One commenter asked how waitlists would be handled—by population group, services or in some other manner. Several other commenters requested further clarification around wait lists.

*Response:* Through current guidance in the Instructions and Technical Guide for section 1915(c) waivers, CMS allows states to prioritize selection of entrants into a waiver, so a state has the flexibility to structure prioritization for waiver entry. However, once a person has entered the waiver all included services must be made available to those who need them (as indicated in the person-centered assessment and service plan).

*Comment:* One commenter asked CMS to clarify what ''equal access'' means. ''Can there be different sets of services within a combined waiver targeted to specific groups?''

*Response:* Equal access means that once individuals have enrolled in the waiver all services in the waiver must be made available to them, if needed (as indicated in the person-centered assessment and service plan).

*Comment:* Commenters raised several concerns related to case management. One commenter stated that the case management entity should not be able to also be the agency that is administering the self-directed hours as the payroll agent. Another commenter expressed concern about combining disability populations in terms of quality of case management provided, the number of people for whom states can provide case management and how states can differentiate populations and services.

*Response:* We continue to appreciate the critical role of case management in the lives of waiver participants. How states set up their case management system for a waiver with combined target groups will be an important consideration. Through appropriate provider qualifications, we believe that states will be able to ensure that waiver case management services meet the needs of populations served.

*Comment:* There were several themes amongst the many commenters who agreed with the proposed language in the rule. These themes included supporting flexibility to allow a family-based approach to service design and delivery, improving access, reducing inequities and fragmentation between disability groups and improving administrative efficiencies at both the provider and state levels. Several commenters spoke favorably about how combining target groups would allow both an aging parent and a person with intellectual disabilities to be served in the same waiver. Other commenters commended CMS for breaking down ''silos'' between populations of people with different disabilities by allowing states to combine target groups in waivers. A few commenters expressed particular support related to the rule change's potential impact on expanding opportunities for people with mental illness to be served in waivers, as they have historically been underserved in section 1915(c) of the Act waivers.

*Response:* We appreciate these comments and are retaining the proposed language in this section of the rule.

4. State Assurances (§ 441.302)

In an effort to ensure that safeguards are in place to protect the health and welfare of each waiver participant, we proposed in a new paragraph § 441.302(a)(4) that to choose the option of more than one target group under a single waiver, states must assure CMS that they are able to meet the unique service needs that each individual may have regardless of target group, and that each individual in the waiver has equal access to all needed services.

*Comment:* Many commenters who agreed with the proposed changes in targeting stated that a comprehensive service array that ''meets the unique service needs'' of each individual in each target group is critical and that regulation language needs to be strengthened. Additionally, they believe that the provider expertise for specialty populations needs to be maintained. Multiple commenters singled out people with ID/DD in this vein as being at risk without appropriate safeguards to tailor

service packages and provider qualifications to meet their needs.

*Response:* We agree with this comment and strengthened the language included in § 441.302(a)(4) that directs states to ensure that the unique service needs are met. For participants enrolled in the same waiver, states cannot restrict services to certain target groups or choose to provide some services only to people with particular diagnoses. The language in the final rule at § 441.302(a)(4) will now read, ''Assurance that the state is able to meet the unique service needs of the individuals when the state elects to serve more than one target group under a single waiver, as specified in § 441.301(b)(6).''

*Comment:* One commenter noted that ''selects to serve'' should be changed to ''elects to serve'' in regard to state choice about combining target populations in proposed § 441.302(a)(4).

*Response:* We agree and will change the regulation text to read ''elects to serve'' instead of ''selects to serve'' at § 441.302(a)(4).

In addition, to ensure that services are provided in settings that are home and community-based, we proposed in a new paragraph § 441.302(a)(5) that states provide assurance that the settings where services are provided are home and community based, and comport with new paragraph § 441.301(c)(4). While we are not changing the existing quality assurances through this rule, we clarified that states must continue to assure health and welfare of all participants when target groups are combined under one waiver, and assure that they have the mechanisms in place to demonstrate compliance with that assurance.

We received no comments on § 441.302(a)(5) and we will adopt the proposed language.

5. Duration, Extension, and Amendment of a Waiver (§ 441.304)

At § 441.304, we made minor revisions to the heading to indicate the rules addressed under this section. We revised § 441.304(d) and redesignated current § 441.304(d) as new § 441.304(g).

a. Waiver Amendments With Substantive Changes (§ 441.304(d))

The new § 441.304(d) will codify and clarify our guidance (*Application for a section 1915(c) Home and Community-Based Waiver, V. 3.5, Instructions, Technical Guide and Review Criteria, January 2008*) regarding the effective dates of waiver amendments with substantive changes, as determined by CMS. Substantive changes include, but are not limited to changes in eligible populations, constriction of service amount, duration, or scope, or other modifications as determined by the Secretary. We added regulatory language reflective of our guidance that waiver amendments with changes that we determine to be substantive may only take effect on or after the date when the amendment is approved by CMS, and must be accompanied by information on how the state has assured smooth transitions and minimal adverse impact on individuals impacted by the change.

CMS received 43 comments regarding § 441.304(d), which will clarify and codify existing technical guidance governing the effective dates of waiver amendments that make substantive changes.

*Comment:* Several commenters expressed concern that this requirement could be problematic if a state is directed by its legislature to make a change to a waiver program prior to CMS approval of an amendment implementing that change. CMS should consider this possibility as it finalizes this rule. There is no allowance for emergency situations or changes that might benefit clients or providers in the broad definition of ''substantive.''

*Response:* The intention in the rule is to codify our current practice regarding what types of amendments must be implemented prospectively.

*Comment:* A commenter thought that retroactive approvals of waiver amendments should never be allowed.

*Response:* We believe there are situations when a retroactive approval is permissible. For example, codifying the continuation of the current practice for states of being able to increase the number of waiver participants served retroactively allows states to serve more people, while continuing to plan and manage waiver growth within their budgets.

*Comment:* A number of commenters wanted CMS to further clarify what constitutes a substantive change; however, the commenters varied in what they believe a substantive change should include. Several suggested that only changes to eligibility standards, procedures, or methodologies should be considered substantive; others recommended that elimination or reduction in services, and changes in the scope, amount and duration of services, as well as changes in provider rates, would always constitute ''substantive changes.''

*Response:* Given the range of comments on what a list of substantive changes should include, we believe it prudent to maintain most of the language in the proposed rule around the types of examples of substantive changes, while leaving flexibility to the Secretary to determine other types of proposed changes that may also be considered substantive. We have, however, changed the phrase ''change in the eligible population'' to ''constriction in the eligible population'' in the final rule to be more specific about the kind of change that would constitute a ''substantive change.'' We have also rewritten the phrase ''changes in the scope, amount, and durations of the services'' to read ''reduction in the scope, amount, or duration of any service'' to further clarify what constitutes a substantive change. We also believe that a listing of only changes to eligibility standards, procedures, or methodologies is too broad regarding what constitutes a substantive amendment. We do, however, make clear that a state must submit amendments for prospective review and approval by CMS that may have a potentially negative impact on waiver participants, as well as that the amendment must be accompanied by information on how the state has assured smooth transitions and minimal adverse impact on individuals affected by the change.

*Comment:* Several commenters wanted CMS to be more precise with language in this section of the rule. One asked that the list of examples of substantive items not be defined as exhaustive and several other commenters thought the use of ''may include'' in regard to substantive changes, was too permissive. Another commenter recommended that CMS state that the elimination or reduction in services and changes in the scope, amount, and duration of services will always constitute ''substantive changes.''

*Response:* We agree that the term ''may include'' is not sufficiently precise to be helpful. We have deleted the word ''may'' from § 441.304(d)(1) and have rewritten this section of the rule as follows: ''Substantive changes include, but are not limited to, revisions to services available under the waiver including elimination or reduction of services, or reduction in the scope, amount, and duration of any service, a change in the qualifications of service providers, changes in rate methodology or a constriction in the eligible population.'' We believe the current language noting that the list of substantive examples is not limited to just the changes listed is sufficiently clear.

*Comment:* A few commenters wanted CMS to allow states to gain retroactive

approval to the date of the submission of the amendment, as opposed to the date CMS approved the amendment. The commenters noted that using the date of CMS approval can present significant challenges to a state when it is under legislative mandate to make a change or implement a budget initiative.

*Response:* While we are sympathetic to the budgetary challenges faced by states, we believe it would not be in the best interest of waiver participants to allow approval retroactive to the date of substantive amendment submissions. The rule reflects and maintains our current waiver amendment review procedures.

*Comment:* Commenters agreed with several aspects of the proposed language in the rule regarding substantive changes to amendments. Some liked that CMS is not allowing substantive changes in an already existing waiver to take effect until the waiver has been approved by CMS, as this will help ensure that waivers fulfill the mandate of the HCBS waiver program. A commenter agreed with CMS's definition of substantive changes. Another commenter noted that he liked that a state will need to demonstrate how it will ensure smooth transition and minimal disruption to service or adverse impact of a change on beneficiaries.

*Response:* We concur with these comments. We agree that the rule is being changed to achieve the purposes outlined by these commenters.

b. Public Notice and Input (§ 441.304(e) and (f))

Given the important requirement at § 447.205, which describes states' responsibilities to provide public notice when states propose significant changes to their methods and standards for setting payment rates for services, we added a new paragraph § 441.304(e) to remind states of their obligations under § 447.205. We further included a new paragraph § 441.304(f) directing that states establish public input processes specifically for HCBS changes. These processes, commensurate with the change, could include formalized information dissemination approaches, conducting focus groups with affected parties, and establishing a standing advisory group to assist in waiver policy development. These processes must be identified expressly within the waiver document and used for waiver policy development. The input process must be accessible to the public (including individuals with disabilities) and states must make significant efforts to ensure that those who want to participate in the process are able to do so. These processes must include consultation with federally-recognized Indian Tribes in accordance with federal requirements and the state must seek advice from Indian health programs or Urban Indian Organizations prior to submission of a waiver request, renewal, amendment or action that would have a direct effect on Indians or Indian health providers or Urban Indian Organizations in accordance with section 5006(e) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, enacted on February 17, 2009).

We received 102 comments regarding § 441.304(e) and (f), which would clarify the public input and notice requirements for all section 1915(c) waiver actions.

*Comment:* One commenter thought the description of a public input process for any changes in services or operations of a waiver was too broad.

*Response:* The intent in the rule is to strengthen our current practice of encouraging states to engage in a public input process in order to ensure such input without being overly prescriptive to states in how that process is implemented. The language in the rule gives states examples for soliciting such public input, while not limiting additional methods that may work better in particular states and/or for particular waivers.

*Comment:* Several commenters asked CMS to provide more specific requirements around process, time frames and methods used for public input. One suggested adding a provision that states must provide public notice of waiver amendments and provide information, training, and technical assistance to stakeholders, including individuals enrolled in the waiver and their families, when waiver amendments include substantive changes. Another suggested that we require specific activities that would ensure real input, participation and transparency; such as minimum times for posting notice of changes (30 days), listing of specific mechanisms or venues for posting, a listserv, mandatory stakeholder meetings, posting on CMS Web sites of all active and pending waivers, submission of all public comments and state actions to address those comments. Other commenters suggested more generally that CMS establish some threshold for minimum public input process elements in the regulation. Another approach recommended was for CMS to provide a standard against which a state will be measured to demonstrate that a public input process is ''sufficient.''

*Response:* While we appreciate the suggestions of the commenters to strengthen the public notice and input requirements in the regulation, we believe that the level of detail suggested in some of the comments is not appropriate for regulation; additionally, some of these suggestions may be addressed in future guidance. However, we do agree with the comment suggesting implementing a minimum amount of time for posting notice of changes. In the final rule, we have included language stating that we will require that the State provide the public a period of no less than 30 days in which to provide input on a rule change prior to implementation of that change or submission of the proposed change to CMS, whichever comes first.

*Comment:* One commenter was concerned that extensive public input periods could prove challenging.

*Response:* We believe that the time period specified is not extensive, but rather appropriate to allow for meaningful public input based on the breadth of the changes.

*Comment:* A commenter expressed concerns that since states are already required to develop a process for tribal consultation that meets ARRA requirements, requiring the state to consult with all the tribes would require a different process for waiver changes.

*Response:* We do not believe that the guidance in the rule is in conflict with provisions in 5006(e) of the American Recovery and Reinvestment Act of 2009 (ARRA), which required solicitation of advice from Indian health programs and urban Indian organizations.

*Comment:* A number of commenters thought CMS should provide further clarification on what types of actions are considered substantive and would be subject to a public input process; however, there were differing opinions as to what level of change required public input. Several commenters thought it should include changes in policies such as qualifications of service providers, eligibility requirements, and changes to services covered in the waiver. Others thought that any changes in services or operations of the waiver would require public notice and input.

*Response:* Consistent with our response to comments regarding waiver amendments with substantive changes, we believe that it would be difficult to come up with an exhaustive list of specific items that would be considered substantive beyond the general categories we listed in the proposed rule. Further, what may be a substantive change for one waiver may be less significant in a different waiver or in a different state depending on the waiver design and the service package. Therefore, we believe that the regulation

is currently worded to invite public input when it is appropriate; adding further detail in the regulation would not be beneficial.

*Comment:* A number of commenters made recommendations about accessibility standards to ensure that the broadest range of stakeholder input is obtained. Most specifically, commenters wanted to assure that people with disabilities, including people with vision and hearing impairments; other cognitive, mental, or physical disabilities; and people with limited English proficiency were included in the process in a meaningful way. One of the suggestions was to make sure they were included on standard advisory groups. Again, the suggested methods to accomplish this level of accessibility varied greatly. A commenter asked that CMS include language from the preamble in regulatory text that requires accessibility for public input. Others asked that CMS detail how individuals or organizations can submit oral or written input. While there were a few comments that service providers should be required to be part of an input process, we received more comments about making sure that people with disabilities have access to an input process.

*Response:* By requiring states to detail the processes they used to solicit input from the public in the waiver application, we will have an appropriate oversight mechanism to review the integrity of a specific waiver and specific state processes. We also have a mechanism, as noted in the proposed rule at § 441.304(f)(1), to specifically look at how the process included and was made accessible to people with disabilities. This requirement specifies that, ''this process must be described fully in the state's waiver application and be sufficient in light of the scope of the changes proposed, to ensure meaningful opportunities for input for individuals served, or eligible to be served, in the waiver.''

*Comment:* A theme from several commenters was that CMS should establish specific guidelines and accountability mechanisms for states around public notice. Some of the types of suggestions we received included requests for CMS to: add a requirement that the agency reply to public comments received; file the public comments and agency replies with CMS; include language to require written legal decisions for compliance with Open Meetings Act/Sunshine Laws; add an accountability measure to use a public input process for a state agency; and monitor compliance through subsequent audits that would include interviews with people with disabilities and other stakeholders to determine the level of public input and decision making.

*Response:* By requiring states to describe in the waiver application the processes they used to solicit input from the public, we will have an appropriate oversight mechanism to review the integrity of the process, while allowing states flexibility to implement public input processes that make sense for the specific waiver and the state or are required under state law. We will consider whether further guidance along these lines would be helpful.

*Comment:* A commenter wanted CMS to clarify that the public input process should apply to new waivers and not just existing waivers.

*Response:* We concur with this comment and clarified in the rule that the public input process should be for both existing waivers that have substantive changes proposed, either through the renewal or the amendment process, and new waivers. We also clarified that the public input process must be fully described in a state's waiver application.

*Comment:* Several other comments received went beyond the scope of the regulation, such as asking for more transparency in negotiations between CMS and states regarding review of waiver actions. Another asked for an assurance that input gathered from the public should influence change.

*Response:* The scope of the regulation was not intended to address our review process and review criteria, which is addressed further in the Instructions and Technical Guide for section 1915(c) HCBS waivers. We believe that the regulation changes strengthen requirements for states to solicit meaningful public input prior to waiver submissions to CMS, which will help states in making decisions about the design and operation of their waiver programs that benefit the populations to be served.

*Comment:* Commenters noted CMS was not clear on whether there were any differences between public input regarding rate changes and notice for operations and service changes, as these two areas were described separately in the proposed rule.

*Response:* Since there are already existing regulations that address notice requirements to methods and standards of setting payment rates across Medicaid authorities, we are reminding states of those obligations with the rule. In addition, in this rule we are adding new provisions regarding public notice for HCBS changes that are similar to those for setting payment rates.

*Comment:* There were several themes among the many commenters who agreed with the proposed language in the rule regarding public notice and input. Commenters supported the requirement that state agencies must provide public notice of any significant proposed change in their methods and standards for setting payment rates for services. They also appreciated the inclusion of stakeholders in the process. Commenters expressed agreement with CMS that public input is important for waiver development and that the input process must be accessible to the public (including persons with disabilities), and a state must be required to make efforts to ensure that those who want to participate can do so.

*Response:* We concur with these comments. We agree that the rule is being changed to achieve the purposes outlined by those commenters who support the proposed rule change.

c. Selecting Strategies To Ensure Compliance (§ 441.304(g))

In new paragraph, § 441.304(g), we added language describing additional strategies we may employ to ensure state compliance with the requirements of a waiver, short of termination or non-renewal. Our regulation at new § 441.304(g) reflects an approach to encourage state compliance. We are interested in working with states to achieve full compliance without having to resort to termination of a waiver. Therefore, we proposed strategies to ensure compliance in serious situations short of termination. These strategies include use of a moratorium on waiver enrollments or withholding federal payment for waiver services or administration of waiver services in accordance with the seriousness and nature of the state's noncompliance. These strategies could continue, if necessary, as the Secretary determines whether termination is warranted. Our primary objective is to use such strategies rarely, only after other efforts to resolve issues to ensure the health and welfare of individuals served or to resolve other serious non-compliance issues have not succeeded.

Once CMS employs a strategy to ensure compliance, the state must submit an acceptable corrective action plan in order to resolve all areas of noncompliance. The corrective action plan must include detail on the actions and timeframe the state will take to correct each area of noncompliance, including necessary changes to the quality improvement strategy and a detailed timeline for the completion and implementation of corrective actions.

We will determine if the corrective action plan is acceptable.

We received 50 comments on § 441.304(g) regarding the actions we can take if a Medicaid agency is substantively out of compliance with waiver requirements.

*Comment:* One commenter stated that they believed the standard audit process was the best way to achieve compliance.

*Response:* Onsite visits and audits are a tool we utilize to ensure states clearly understand our guidance and adhere to regulatory requirements. After 30 years of running the section 1915(c) waiver program, it has become clear that other methods are needed to ensure the welfare of our beneficiaries.

*Comment:* Commenters stated their concern with the potential harm to beneficiaries that could result from moratoria on waiver enrollments and urged us to use the moratoria as a last resort.

*Response:* We understand the potential negative effects a moratorium on waiver enrollments may have on beneficiaries. Opportunities exist, such as technical assistance and corrective action plans, to assist a state to achieve compliance without the use of a moratorium. We will always be ready to assist states through these means before moving forward with a moratorium. We also note that the main compliance tool currently available to us, termination of the waiver, has the potential to harm an even higher number of individuals needing HCBS.

*Comment:* Many commenters agreed with the use of withholding a portion of federal payment.

*Response:* Certain tools, such as withholding a portion of federal payment, will only be utilized when necessary and after most other options have been exhausted. At this time, we believe we will see the necessary results to be assured that the care of our beneficiaries is foremost to states.

*Comment:* One commenter recommended transparency as to where withheld funds will go and how these funds will be used.

*Response:* We are committed to transparency. We will release the information we are legally allowed to make public.

*Comment:* One commenter suggested we clarify whether the opportunity for a hearing will be afforded when a state disputes compliance rulings similar to the processes and safeguards specified in part 430 subpart D.

*Response:* We reiterate that these additional enforcement measures are part of a broader array of approaches we may take to achieve and maintain full compliance with the requirements specified in section 1915(c) of the Act, in addition to waiver termination. States will be afforded an opportunity to appeal. The procedures specified in subpart D of part 430 of this chapter are applicable to state requests for hearings on all non-compliance actions, including terminations.

*Comment:* Many commenters wanted assurances from CMS that due process procedure will be followed before a moratorium is set or funds are withheld and that enforcements should be waiver specific.

*Response:* The tools discussed to ensure compliance will only be utilized after we have tried several other remedies, including technical assistance and action plans. We will provide states with a written notice of the impending strategies to ensure compliance for a waiver program. The notice of our intent to use strategies to ensure compliance will include the nature of the noncompliance, the strategy to be employed, the effective date of the compliance strategy, the criteria for removing the compliance strategy and the opportunity for a hearing as specified in subpart D of part 430.

*Comment:* One commenter suggested that CMS develop a way to cover the cost of training while a state is under a compliance strategy.

*Response:* Compliance is a state's responsibility when accepting federal financial funding. That funding may be used to ensure compliance measures are in place.

*Comment:* One commenter expressed support for the use of compliance strategies other than termination or nonrenewal.

*Response:* We agree that additional options for promoting and ensuring state compliance with HCBS waiver requirements should be available. We have therefore added the phrase ''or other actions as determined by the Secretary as necessary to address non-compliance with section 1915(c) of the Act'' to the regulation text.

## IV. Provisions of the Final Regulations

### *A. 1915(k) Community First Choice and 1915(i) State Plan Home and Community-Based Services*

The provisions proposed as new subpart L, consisting of § 441.650 through § 441.677, added to part 441 will be codified as subpart M, consisting of § 441.700 through § 441.745.

For the most part, this final rule incorporates the provisions of the proposed rule. In response to comments as explained in the responses in the above section, those provisions of this final rule that differ from the proposed rule are as follows:

Under § 430.25 (waivers of State plan requirements), we added ''and in a manner consistent with the interests of beneficiaries and the objectives of the Medicaid program.'' This was language from the preamble of the proposed rule, for which we received a comment requesting that it also be incorporated into the text of the final regulation.

In response to many comments received, and for the reasons provided in the responses above for each specific provision, we revised and added new language to § 441.530(a), regarding home and community-based setting requirements for 1915(k) and to § 441.710(a), regarding home and community-based setting requirements for 1915(i). In addition to those specific provisions, we examined the overall themes of the commentary received and our basis for the HCB settings requirements as a whole. All of the overall ideas may be found within the summary of comments and our responses in the above section, which are organized by specific provisions of the proposed rules.

In § 440.182(c)(8), which refers to conditions set forth at § 440.180 for persons with chronic mental illness, we have revised this reference to § 440.180(d)(2) to be more precise.

Under eligibility for home and community-based services under § 441.710(d), we corrected the reference to target criteria from (b)(2) to (e)(2).

Under § 441.710(e)(2)(ii), we corrected the reference to § 440.182(b) to § 440.182(c).

We have corrected § 441.715(b)(2) to replace the reference to (c)(7) to instead specify (c)(6).

We have corrected § 441.715(c) by replacing ''the Secretary will approve'' with ''the Secretary may approve.''

We have corrected § 441.715(d) to replace the reference to section 441.710(a)(1) to § 441.658.

In § 441.715(d)(2), we have revised the reference to § 441.656 so that it now reads correctly as a reference to § 435.219 and § 436.219.

At § 441.720(a)(1), we made a minor correction and added a cross reference after ''person-centered process'' to § 441.725(a).

At § 441.720(a)(1)(i)(A), we revised the language to be consistent with other language in this regulation.

We added ''cognitive'' to § 441.720(a)(4) in response to comments received, to specifically include assessment of needs related to cognitive impairment.

We have revised the first sentence of § 441.720(a)(5).

In response to numerous comments received regarding the section 1915(i) of

the Act person-centered planning process and person-centered service plan, and in order to align these requirements across sections 1915(c) and 1915(i) of the Act HCBS, we have modified the requirements in § 441.725 of this final rule. In addition, we examined the overall themes of the commentary received. An explanation of changes to regulation as a result of comments received may be found within the responses in the section above.

In § 441.730(c), we added ''cognitive'' and current knowledge of ''available resources, service options, and providers'' to this requirement.

We added a new statement to § 441.735(a) regarding the definition of individual's representative to indicate that in instances where state law confers decision-making authority to the individual representative, the individual will lead the service planning process where possible and the individual representative will have a participatory role, as needed and as defined by the individual.

We revised § 441.735(c).

We revised § 441.740(b)(4).

For clarity, we have moved the requirement regarding financial management supports that was previously at both § 441.674(c)(2) and § 441.674(d)(4) of the proposed rule, to a new (5) under § 441.740(b) of this final rule.

We edited employer authority at § 441.740(c) to ensure consistency with statutory language, by replacing ''or'' with ''and'' so that it now reads as ''the ability to select, manage, and dismiss providers of State plan HCBS.''

We revised § 441.740(e)(3).

Since advance notice is a topic in part 431, subpart E, we have added ''advance notice'' to the regulation at § 441.745(a)(1)(iii).

We revised § 441.745(a)(2)(vi) to specify that for renewal, the state's 1915(i) benefit must meet the state's objectives with respect to quality improvement and beneficiary outcomes.

We revised § 441.745(b)(1)(ii) to add language that was in the preamble of the proposed rule.

*B. 1915(c) Home and Community Based Services Waivers*

We have outlined in section III of this preamble the revisions in response to the public comments. Those provisions of this final rule that differ from the proposed rule are as follows:

Based upon the complexities of the comments received, we have reorganized the regulations to finalize the provisions proposed at § 441.301(b)(1)(i)(A) through § 441.301(b)(1)(i)(B)(*12*) as new paragraph § 441.301(c).

At § 441.301(c)(1) and (2), we made some general revisions to the terminology utilized to strengthen language regarding services. We added the term ''supports'' when referencing services to now use the language ''services and supports.'' We also revised person-centered plan as ''person-centered service plan.''

At § 441.301(c)(1)(i) we added language to more clearly define the role of the individual's representative and refer to the 1915(i) definition of the individual's representative at § 441.735 in this rule.

We have revised § 441.301(c)(i)(ii) to more clearly state the individual's role in directing the person-centered planning process.

We have revised § 441.301(c)(1)(iii) to include a requirement for timeliness.

We have revised § 441.301(c)(1)(v) to strengthen this language to direct that the state devise clear conflict-of-interest guidelines addressed to all parties who participate in the person-centered planning process.

We have added a new provision at § 441.301(c)(1)(vi) to clarify conflict of interest standards pertaining to providers of HCBS. The proposed text at § 441.301(b)(1)(i)(A)(*6*) through (*8*) all shifted down by one number and are included in the final rule at § 441.301(c)(1)(vii) through (ix).

We have revised § 441.301(c)(1)(vii) to clarify that individuals should be informed of all the possibilities from which they may choose regarding services, as well as the consequences of these choices.

We added a new provision at § 441.301(c)(1)(ix) to clarify that the setting in which an individual resides is an important part of the person-centered planning process.

We have revised § 441.301(c)(2) to align the language with other HCBS authorities.

We have added a new provision at § 441.301(c)(2)(i) to ensure that the individual's choice of setting is documented in the person-centered service plan. The proposed text at 441.301(b)(1)(i)(B)(*1*) through (*5*) all shifted down by one number and is included in the final rule at § 441.301(c)(2)(ii) through (vi). In addition, we added language to ensure community integration.

We have revised § 441.301(c)(2)(iii) and (iv) to align the language with other HCBS authorities.

We have revised § 441.301(c)(2)(v) by adding further clarifying language regarding ''natural supports.''

We have revised previously numbered § 441.301(b)(1)(i)(B)(*6*) to clarify privacy and control over personal information and have moved this requirement to § 441.301(c)(2)(ix).

We have revised § 441.301(c)(2)(vi) to strengthen the language regarding risks for individuals.

We removed § 441.301(b)(1)(i)(B)(*8*) from the final rule because this requirement is a part of the person-centered planning requirements at § 441.301(c)(1)(iii) and (vii).

We revised § 441.301(c)(2)(xi) to provide clarifying language regarding the requirement for self-direction of services.

We revised § 441.301(c)(2)(xii) to replace the term ''care'' with the term ''services and supports.''

We added new language at § 441.301(c)(2)(xiii) and at § 441.301(c)(3) to align with other HCBS authorities.

We revised § 441.301(c)(4) by replacing the language with new standards for HCBS settings that are aligned with other HCBS authorities.

We added a provision at § 441.301(c)(5) to specify the settings that are not home and community-based.

We added a new provision at § 441.301(c)(6)to specify the requirements for States to achieve compliance with the HCB settings standards.

We revised § 441.302(a)(4) to clarify the expectations that each individual within a waiver, regardless of target group, has equal access to the services necessary to meet their unique needs. In addition, we made a technical correction by changing ''selects to serve'' to ''elects to serve.''

We have added a new provision at § 441.302(a)(4)(i) directing states to annually report data in the quality section of the CMS–372 regarding serving multiple target groups in a single waiver to ensure that a single target group is not being prioritized to the detriment of other groups.

We revised § 441.304(d)(1) to be more specific about the kind of change that constitutes a ''substantive change'' regarding HCBS waiver amendments.

We added a new provision at § 441.304(f)(2) to strengthen the public notice and input process by including a minimum time limit for posting notice of changes.

We added a new provision at § 441.304(f)(3) to clarify when the public input process applies.

We revised § 441.304(g)(3)(i) to clarify that additional options for promoting and ensuring state compliance with

HCBS waiver requirements should be allowed.

## V. 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. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements:

- ICRs Regarding Individuals Receiving State Plan Home and Community-based Services (§ 435.219(b) and § 436.219(b))

To cover the categorically needy eligibility group, the State would be required to submit a SPA and may elect to cover individuals who meet certain requirements in § 435.219(a) or § 436.219(a). The burden associated with this requirement is the time and effort put forth by the State to complete, review, process and transmit/submit the pre-print which describes the eligibility criteria for the group. We estimate it would take each State 30 hours to meet this one-time requirement. We estimate that on an annual basis, 3 States will submit a SPA to meet these requirements; therefore, the total annual burden hours for this requirement are 90 hours. We believe that a State employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each State is anticipated to be $1,030; this equates to an annual cost of $3,091.

- ICRs Regarding Eligibility for State Plan HCBS (§ 441.710) (Proposed § 441.656)

If a State elects to target the benefit to specific populations, § 441.710(e)(2) requires submission of targeting criteria to CMS. The burden associated with this requirement is the time and effort put forth by the State to establish such criteria. We estimate it would take 1 State 10 hours to meet this one-time requirement. We estimate that on an annual basis, 3 States will submit a SPA to offer the State plan HCBS benefit that targets specific populations, and be affected by this requirement; therefore, the total annual burden hours for this requirement is 30 hours. We believe that a State employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each State is anticipated to be $343; this equates to an annual cost of $1,030.

- ICRs Regarding Needs-Based Criteria and Evaluation § 441.715 (Proposed § 441.659)

Section 441.715(a) requires a State to establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit, and may establish needs-based criteria for each specific service. The burden associated with this requirement is the time and effort put forth by the State to establish such criteria. We estimate it would take 1 State 24 hours to meet this requirement. We estimate that on an annual basis, 3 States will submit a SPA to offer the State plan HCBS benefit, and be affected by this one-time requirement; therefore, the total annual burden hours for this requirement is 72 hours. We believe that a State employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each responding State is anticipated to be $824; this equates to an annual cost of $2,472.

Section 441.715(b) reads that if a State defines needs-based criteria for individual State plan home and community-based services, the needs-based institutional eligibility criteria must be more stringent than the combined effect of needs-based State plan HCBS benefit eligibility criteria and individual service criteria. Section 441.715(b)(1)(ii) requires the State to submit the more stringent criteria to CMS for inspection with the State plan amendment that establishes the State Plan HCBS benefit.

The burden associated with this requirement is the time and effort for the State to define the more stringent criteria and submit it to CMS along with the State plan amendment that establishes the HCBS benefit. We anticipate 3 States would be affected by this requirement on an annual basis and it would require 1 hour to prepare and submit this information. The one-time burden associated with this requirement is 3 hours. We believe that a State employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each State is anticipated to be $34; this equates to an annual cost of $102. This would be a one-time burden for each responding State.

Section 441.715(c) reads that a state may modify the needs-based criteria established under paragraph (a) of this section, without prior approval from the Secretary, if the number of individuals enrolled in the state plan HCBS benefit exceeds the projected number submitted annually to CMS.

Section 441.715(c)(1) requires the state to provide at least 60 days notice of the proposed modification to the Secretary, the public, and each individual enrolled in the State plan HCBS benefit. The State notice to the Secretary will be considered an amendment to the State plan.

Section 441.715(c)(2) requires the State notice to the Secretary be submitted as an amendment to the State plan.

The burden associated with the requirements found under § 441.715(c) is the time and effort put forth by the State to modify the needs-based criteria and provide notification of the proposed modification to the Secretary. We estimate it would take 1 State 24 hours to make the modifications and provide notification. This would be a one-time burden.

The total annual burden of these requirements (§ 441.715(c), § 441.715(c)(1), and § 441.715(c)(2)) would vary according to the number of States who choose to modify their needs-based criteria. We do not expect any States to make this modification in the next 3 years, thus there is no anticipated burden.

Section 441.715(d) states that eligibility for the State plan HCBS benefit is determined, for individuals who meet the requirements of § 441.710(a)(1) through (5), through an independent evaluation of each individual that meets the specified requirements. Section 441.715(d)(5) requires the evaluator to obtain information from existing records, and when documentation is not current and accurate, obtain any additional information necessary to draw a valid conclusion about the individual's support needs. Section 441.715(e) requires at least annual reevaluations.

The burden associated with this requirement is the time and effort put forth by the evaluator to obtain information to support their conclusion. We estimate it would take one evaluator 2 hours per participant to obtain

information as necessary. The total annual burden of this requirement would vary according to the number of participants in each State who may require and be eligible for HCBS under the State plan. The individuals performing this assessment would vary based upon State benefit design, but will likely include individuals such as registered nurses, qualified developmental disability professionals, qualified mental health professionals, case managers, or other professional staff with experience providing services to individuals with disabilities or the elderly. While there is burden associated with this requirement, we believe the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities.

• ICRs Regarding Independent Assessments § 441.720 (Proposed § 441.662)

Section 441.720 requires the State to provide for an independent assessment of need in order to establish a person-centered service plan. At a minimum, the person-centered service plan must meet the requirements as discussed under § 441.725.

While the burden associated with the requirements under § 441.720 is subject to the PRA, we believe the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities.

• ICRs Regarding State Plan HCBS Administration: State Responsibilities and Quality Improvement § 441.745 (Proposed § 441.677)

Section 441.745(a)(1)(i) reads that a State will annually provide CMS with the projected number of individuals to be enrolled in the benefit, and the actual number of unduplicated individuals enrolled in State plan HCBS in the previous year.

The burden associated with this requirement is the time and effort put forth by the state to annually project the number of individuals who will enroll in State plan HCBS. We estimate it will take one state 2 hours to meet this requirement. The total annual burden of these requirements would vary according to the number of States offering the State plan HCBS benefit. The maximum total annual burden is 112 hours (56 States x 2 hours = 112 hours). We believe that a state employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the anticipated for each state is anticipated to be $69; this equates to a maximum annual cost of $3,864 if all 56 states elect to provide this benefit. There are currently six states with approved State plan HCBS benefits. Thus, we anticipate based on current benefits that the total annual aggregated burden will be $414.

Section 441.745(a)(2)(iii) reads that the SPA to provide State plan HCBS must contain a description of the reimbursement methodology for each covered service.

The burden associated with this requirement is the time and effort put forth by the state to describe the reimbursement methodology for each State plan HCBS. We estimate that it will take one state an average of 2 hours to determine the reimbursement methodology for one covered HCBS. This would be a one-time burden. The total annual burden for this requirement would vary according to the number of services that the state chooses to include in the state plan HCBS benefit. We believe that a state employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost to each state for each covered service is anticipated to be $69; this would vary based upon the number of services covered. This would be an annual burden for each responding state. Since we have estimated that 3 states will annually describe the reimbursement methodology, the total annual aggregated burden associated with this requirement is estimated to be $207.

Section 441.745(a)(2)(iv) reads that the SPA to provide State plan HCBS must contain a description of the State Medicaid agency line of authority for operating the State plan HCBS benefit, including distribution of functions to other entities.

The burden associated with this requirement is the time and effort put forth by the state to describe the State Medicaid agency line of authority. We estimate it will take one state 2 hours to meet this requirement. Since we have estimated that 3 states will annually request State plan HCBS, the total annual burden associated with this requirement is estimated to be 6 hours. This would be a one-time burden for each responding state. We believe that a state employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each State is anticipated to be $69.

Section 441.745(a)(2)(vi) limits the approval period for states that target the benefit to specific populations. If a state elects to target the benefit, this section requires a renewal application every 5 years in order to continue operation of the benefit. Actual time to meet this requirement will vary depending on the scope of the program and any changes the state includes. However, we estimate that it will take one state an average of 40 hours to meet this requirement. This includes reviewing the previous submission, making any necessary changes to the state plan document(s), and communicating with CMS regarding the renewal. This burden would occur once every five years and would be recurring. We estimate that, beginning in 2016, 3 states will annually request renewal and the total burden will be 120 hours. We believe that a state employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible for this requirement. Thus, the cost for each State is anticipated to be $1,374; this equates to an annual cost of $4,122. This would be a burden for each State that targets its benefit once every 5 years; however, this burden will not take effect until 2016.

Section 441.745(b) requires States to develop and implement a quality improvement strategy that includes methods for ongoing measurement of program performance, quality of care, and mechanisms for remediation and improvement proportionate to the scope of services in the State plan HCBS benefit and the number of individuals to be served, and make this information available to CMS upon the frequency determined by the Secretary or upon request.

The burden associated with this requirement is the time and effort put forth by the state to develop and implement a quality improvement strategy, and to make this information available to CMS upon the frequency determined by the Secretary or upon request. We estimate it will take one state 45 hours for the development of the strategy, and for making information available to CMS. The total annual burden of these requirements would vary according to the number of states offering the state plan HCBS benefit. The maximum total annual burden is estimated to be 2,520 hours (56 states × 45 hours = 2,520 hours). We estimate that the burden associated with implementation of the quality improvement strategy will greatly vary, as the necessary time and effort to perform these activities is dependent upon the scope of the benefit and the number of persons receiving state plan HCBS. We believe that a state employee, with pay equivalent to GS–13 step one ($34.34 per hour) would be responsible

for this requirement. Thus, the cost for each State is anticipated to be $1,545; this equates to a maximum annual cost of $86,537. Currently, there are 6 states with approved benefits, thus we anticipate an annual burden based on current States of $9,270.

TABLE 1—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

| Regulation section(s) | OMB Control No. | Respondents | Responses | Burden per response (hours) | Total annual burden (hours) | Hourly labor cost of reporting ($) | Total labor cost of reporting ($) | Total capital/ mainte-nance costs ($) | Total cost ($) |
|---|---|---|---|---|---|---|---|---|---|
| 435.219(b) and 436.219(b) | 0938–1148 | 3 | 3 | 30 | 90 | 34.34 | 1,030 | 0 | 1,030 |
| 441.656(e)(2) of proposed rule; 441.710(e)(2) of final rule | 0938–1148 | 3 | 3 | 10 | 30 | 34.34 | 1,030 | 0 | 1,030 |
| 441.659(a) of proposed rule; 441.715(a) of final rule | 0938–1148 | 3 | 3 | 24 | 72 | 34.34 | 2,472 | 0 | 2,472 |
| 441.659(b) of proposed rule; 441.715(b) of final rule | 0938–1148 | 3 | 3 | 1 | 3 | 34.34 | 103 | 0 | 103 |
| 441.677(a)(1)(i) of proposed rule; 441.745 (a)(1)(i) of final rule | 0938–1148 | 6 | 6 | 2 | 12 | 34.34 | 414 | 0 | 414 |
| 441.677(a)(2)(iii) of proposed rule; 441.745 (a)(2)(iii) of final rule | 0938–1148 | 3 | 3 | 2 | 6 | 34.34 | 207 | 0 | 207 |
| 441.677(a)(2)(iv) of proposed rule; 441.745(a)(2)(iv) of final rule | 0938–1148 | 3 | 3 | 2 | 6 | 34.34 | 207 | 0 | 207 |
| 441.677(b) of proposed rule; 441.745 of final rule | 0938–1148 | 6 | 6 | 45 | 270 | 34.34 | 9,270 | 0 | 9,270 |
| Total | | | | | 489 | | 14,733 | 0 | 14,733 |

## VI. Regulatory Impact Analysis

### *A. Statement of Need*

The state plan HCBS benefit is authorized under section 1915(i) of the Act. Section 1915(i) was created by the Deficit Reduction Act of 2005 (DRA) and was amended by the Affordable Care Act of 2010. The resulting statute provides states with authority to establish state plan HCBS benefits in their Medicaid program.

These regulations are necessary in order to include the state plan HCBS within the Code of Federal Regulations (CFR). Additionally, these regulations provide states with direction and clarity regarding the framework under which the programs can be established.

### *B. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final 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.

### *C. Overall Impacts*

We estimate that, as a result of this final rule, the Medicaid cost impact for provisions under 1915(i) for fiscal year (FY) 2014 will be $150 million for the federal share and $115 million for the state share. The estimates are adjusted for a phase-in period during which states gradually elected to offer the state plan HCBS benefit. Furthermore, the estimated total annual collection of information requirements cost (including fringe benefits and overhead) to states is $21,805 (see section V. Collection of Information Requirements).

Provisions in this rule pertaining to section 2601 of the Affordable Care Act: 5-Year Period for Demonstration Projects (Waivers), Provider Payment Reassignments, section 2401 of the Affordable Care Act: 1915(k) Community First Choice State Plan Option: Home and Community-Based Setting Requirements, and 1915(c) Home and Community-Based Services Waivers will not impact federal or state Medicaid funding. While States may incur costs in coming into compliance with these provisions in this rule, given the variability in State programs, and the varying extent to which some are already complying, it is difficult to estimate these costs.

### *D. Detailed Impacts*

#### 1. State Plan HCBS

State Medicaid programs will make use of the optional flexibility afforded by the state plan HCBS benefit to provide needed long-term care HCBS to eligible individuals the state has not had means to serve previously, or to provide services to these individuals more efficiently and effectively. The state plan HCBS benefit will afford states a new means to comply with requirements of the *Olmstead* decision, to serve individuals in the most integrated setting.

The cost of these services will be dependent upon the number of states electing to offer the benefit, the scope of the benefits states design, and the degree to which the benefits replace existing Medicaid services. States have more control over expenditures for this benefit than over other state plan services. For states that choose to offer these services, states may specify limits to the scope of HCBS, target the benefit to specific populations, and have the option to adjust needs-based criteria

requirements if costs escalate too rapidly.

If states elect to include the new optional group, eligibility could be expanded because the group may include individuals who would not otherwise be eligible for Medicaid. However, costs of the state plan HCBS benefit may be offset by lowered potential federal and state costs of more expensive institutional care. Additionally, the requirement for a written person-centered service plan, and the provision of needed HCBS in accordance with the person-centered service plan, may discourage inappropriate utilization of costly services such as emergency room care for routine procedures, which may be beneficial to Medicare and Medicaid when individuals are eligible for both programs. If a state targets this benefit, only individuals who meet the targeting criteria would receive 1915(i) services and be eligible for the group, thus limiting Medicaid HCBS expansion.

After considering these factors, we assumed that, if all states adopted this measure, program expenditures would increase by 1 percent of current HCBS expenditure projections. We further assumed that ultimately, states representing 50 percent of the eligible population would elect to offer this benefit, and that this ultimate level would be reached in FY 2014,. Based on these assumptions, the federal and state cost estimates are shown in Table 2.

TABLE 2—MEDICAID COST ESTIMATES RESULTING FROM CHANGES TO THE STATE PLAN HCBS BENEFIT

[FYs 2014–2018, in $millions]

| | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FYs 2014–2018 |
|---|---|---|---|---|---|---|
| Federal Share | $150 | $165 | $185 | $200 | $225 | $925 |
| State Share | 115 | 125 | 140 | 155 | 170 | 705 |
| Total | 265 | 290 | 325 | 355 | 395 | 1,630 |

The effect on Medicaid beneficiaries who receive the state plan HCBS benefit will be substantial and beneficial in States where optional 1915(i) state plan HCBS are included, as it will provide eligible individuals with the opportunity to receive needed long-term care services and supports in their homes and communities.

The state plan HCBS benefit will afford business opportunities for providers of the HCBS. We do not anticipate any effects on other providers. Section 1915(i) of the Act delinks the HCBS from institutional LOC, and requires that eligibility criteria for the benefit include a threshold of need less than that for institutional LOC, so that it is unlikely that large numbers of participants in the state plan HCBS benefit will be discharged from the facilities of Medicaid institutional providers. There may be some redistribution of services among providers of existing non-institutional Medicaid services into State plan HCBS, but providers who meet qualifications for the state plan HCBS benefit have the option to enroll as providers of HCBS.

This rule has no direct effect on the Medicare program; however, an indirect and beneficial effect may occur if individuals eligible for both Medicare and Medicaid are enrolled in a state plan HCBS benefit.

*E. Alternatives Considered*

This final rule incorporates provisions of new section 1915(i) of the Act into federal regulations, providing for Medicaid coverage of a new optional state plan benefit to furnish home and community-based state plan services. The statute provides states with an option under which to draw federal matching funds; it does not impose any requirements or costs on existing state programs, on providers, or upon beneficiaries. States retain their authority to offer HCBS through the existing authority granted under section 1915(c) waivers and under section 1115 waivers. States can also continue to offer, and individuals can choose to receive, some but not all components of HCBS allowable under section 1915(i) through existing state plan services such as personal care or targeted case management services.

1. Not Publishing a Rule

Section 1915(i) of the Act was effective January 1, 2007. States may propose state plan amendments (SPAs) to establish the state plan HCBS benefit with or without this final rule. We considered whether this statute could be self-implementing and require no regulation. Section 1915(i) of the Act is complex; many states have contacted us for technical assistance in the absence of published guidance, and some have indicated they are waiting to submit a state plan amendment until there is a rule. We further considered whether a State Medicaid Director letter would provide sufficient guidance regarding CMS review criteria for approval of an SPA. We concluded that section 1915(i) of the Act establishes significant new features in the Medicaid program, and that it was important to provide states and the public the published invitation for comment provided by the proposed rule. Finally, state legislation and judicial decisions are not alternatives to a federal rule in this case since section 1915(i) of the Act provides federally funded benefits.

2. Modification of Existing Rules

We considered modifying existing regulations at § 440.180, part 441 subpart G, Home and Community-Based Services: Waiver Requirements, which implement the section 1915(c) HCBS waivers, to include the authority to offer the state plan HCBS benefit. This would have the advantage of not duplicating certain requirements common to both types of HCBS. However, we believe that any such efficiency would be outweighed by the substantial discussion that would be required of the differences between the Secretary's discretion to approve waivers under section 1915(c) of the Act, and authority to offer HCBS under the State plan at section 1915(i) of the Act. While Congress clearly considered the experience to date with HCBS under waivers when constructing section 1915(i) of the Act, it did not choose to modify section 1915(c) of the Act, but chose instead to create a new authority at section 1915(i) of the Act.

*F. Accounting Statement*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in the Table 3, we have prepared an accounting statement showing the classification of the transfers and other impacts associated with the provisions of this final rule. This table provides our best estimate of the increase in aggregate Medicaid outlays resulting from offering states the option to provide the state plan HCBS

benefit established in section 1915(i) of the Act.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND OTHER IMPACTS, FROM FYS 2014 TO 2018

[In $millions] [a]

| Category | Transfers | |
|---|---|---|
| Annualized Monetized Transfers | 3% Units Discount Rate $183.5 | 7% Units Discount Rate $182.1 |
| From Whom To Whom? | Federal Government to Beneficiaries and/or State Governments [b] | |
| Category | Transfers | |
| Other Annualized Monetized Transfers | 3% Units Discount Rate $138.6 | 7% Units Discount Rate $137.5 |
| From Whom To Whom? | State Governments to Beneficiaries and/or State Governments [b] | |
| Category | Costs | |
| Total Annual Collection of Information Requirements Cost to States is $0.02. | | |

[a] The potential benefits of this rule have not been quantified. If beneficiaries who newly use HCBS as a result of this rule are currently being institutionalized at states' expense, the rule would generate some combination of savings to states (equal to the cost difference between institutionalization and HCBS) and benefits to beneficiaries of being at home or in some other setting in the community, rather than an institution. Similarly, there would be benefits to beneficiaries who newly use HCBS if they are currently not receiving needed services.

[b] If the current status is that beneficiaries are paying for services alternative to HCBS themselves, then transfers are flowing from federal and state governments to beneficiaries. If beneficiaries are currently being institutionalized at states' expense, then transfers are from the federal government to state governments and possibly between pools of money within a state—from one pool with inflexible spending rules that require institutional care to another pool that allows for HCBS. Finally, to the extent that beneficiaries are currently not receiving needed services, then some portion of the impacts currently categorized as "transfers" would actually be societal costs.

*G. Conclusion*

We anticipate that states will make widely varying use of the section 1915(i) state plan HCBS benefit to provide needed long-term care services for Medicaid beneficiaries. These services will be provided in the home or alternative living arrangements in the community, which is of benefit to the beneficiary and is less costly than institutional care. Requirements for independent evaluation and assessment, individualized care planning, and requirements for a quality improvement program will promote efficient and effective use of Medicaid expenditures for these services.

## VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any 1 year. Medicaid providers are required, as a matter of course, to follow the guidelines and procedures as specified in state and federal laws and regulations. Furthermore, this final rule imposes no requirements or costs on providers or suppliers for their existing activities. The rule implements a new optional state plan benefit established in section 1915(i) of the Act. Small entities that meet provider qualifications and choose to provide HCBS under the state plan will have a business opportunity under this final rule. The Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule does not offer a change in the administration of the provisions related to small rural hospitals. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

## VIII. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4) 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 2013, that threshold is approximately $141 million. This final rule does not mandate any spending by state, local, or tribal governments, in the aggregate, or by the private sector, of $141 million.

## IX. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of E.O. 13132 are not applicable.

## List of Subjects

*42 CFR Part 430*

Administrative practice and procedure, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*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, Wages.

*42 CFR Part 436*

Aid to Families With Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

*42 CFR Part 440*

Grant programs-health, Medicaid.

*42 CFR Part 441*

Aged, Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

*42 CFR Part 447*

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

## PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 430.25 is amended by revising paragraphs (h)(2) to read as follows:

### § 430.25 Waivers of State plan requirements.

* * * * *

(h) * * *

(2) *Duration of waivers.* (i) *Home and community-based services under section 1915(c) of the Act.*

(A) The initial waiver is for a period of 3 years and may be renewed thereafter for periods of 5 years.

(B) For waivers that include individuals who are dually eligible for Medicare and Medicaid, 5-year initial approval periods may be granted at the discretion of the Secretary for waivers meeting all necessary programmatic, financial and quality requirements, and in a manner consistent with the interests of beneficiaries and the objectives of the Medicaid program.

(ii) *Waivers under section 1915(b) of the Act.*

(A) The initial waiver is for a period of 2 years and may be renewed for additional periods of up to 2 years as determined by the Administrator.

(B) For waivers that include individuals who are dually eligible for Medicare and Medicaid, 5-year initial and renewal approval periods may be granted at the discretion of the Secretary for waivers meeting all necessary programmatic, financial and quality requirements, and in a manner consistent with the interests of beneficiaries and the objectives of the Medicaid program.

(iii) *Waivers under section 1916 of the Act.* The initial waiver is for a period of 2 years and may be renewed for additional periods of up to 2 years as determined by the Administrator.

* * * * *

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 3. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 4. Section 431.54 is amended by adding new paragraphs (a)(3) and (h) to read as follows:

### § 431.54 Exceptions to certain State plan requirements .

(a) * * *

(3) Section 1915(i) of the Act provides that a State may provide, as medical assistance, home and community-based services under an approved State plan amendment that meets certain requirements, without regard to the requirements of sections 1902(a)(10)(B) and 1902(a)(10)(C)(i)(III) of the Act, with respect to such services.

* * * * *

(h) *State plan home and community-based services.* The requirements of § 440.240 of this chapter related to comparability of services do not apply with respect to State plan home and community-based services defined in § 440.182 of this chapter.

## PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 5. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 6. Section 435.219 is added to subpart C under the undesignated center heading ''Options for Coverage of Families and Children and the Aged, Blind, and Disabled'' to read as follows:

### § 435.219 Individuals receiving State plan home and community-based services.

If the agency provides State plan home and community-based services to individuals described in section 1915(i)(1), the agency, under its State plan, may, in addition, provide Medicaid to individuals in the community who are described in one or both of paragraphs (a) or (b) of this section.

(a) Individuals who—

(1) Are not otherwise eligible for Medicaid;

(2) Have income that does not exceed 150 percent of the Federal poverty line (FPL);

(3) Meet the needs-based criteria under § 441.715 of this chapter; and

(4) Will receive State plan home and community-based services as defined in § 440.182 of this chapter.

(b) Individuals who—

(1) Would be determined eligible by the agency under an existing waiver or demonstration project under sections 1915(c), 1915(d), 1915(e) or 1115 of the Act, but are not required to receive services under such waivers or demonstration projects;

(2) Have income that does not exceed 300 percent of the Supplemental Security Income Federal Benefit Rate (SSI/FBR); and

(3) Will receive State plan home and community-based services as defined in § 440.182 of this chapter.

(c) For purposes of determining eligibility under paragraph (a) of this section, the agency may not take into account an individual's resources and must use income standards that are reasonable, consistent with the objectives of the Medicaid program, simple to administer, and in the best interests of the beneficiary. Income methodologies may include use of existing income methodologies, such as the SSI program rules. However, subject to the Secretary's approval, the agency may use other income methodologies that meet the requirements of this paragraph.

## PART 436—ELIGIBILITY IN GUAM, PUERTO RICO AND THE VIRGIN ISLANDS

■ 7. The authority citation for part 436 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 8. Section 436.219 is added to read as follows:

**§ 436.219 Individuals receiving State plan home and community-based services.**

If the agency provides State plan home and community-based services to individuals described in section 1915(i)(1) of the Act, the agency, under its State plan, may, in addition, provide Medicaid to of individuals in the community who are described in one or both of paragraphs (a) or (b) of this section.

(a) Individuals who—

(1) Are not otherwise eligible for Medicaid;

(2) Have income that does not exceed 150 percent of the Federal poverty line (FPL);

(3) Meet the needs-based criteria under § 441.715 of this chapter; and

(4) Will receive State plan home and community-based services as defined in § 440.182 of this chapter.

(b) Individuals who—

(1) Would be determined eligible by the agency under an existing waiver or demonstration project under sections 1915(c), 1915(d), 1915(e) or 1115 of the Act, but are not required to receive services under such waivers or demonstration projects;

(2) Have income that does not exceed 300 percent of the Supplemental Security Income Federal Benefit Rate (SSI/FBR); and

(3) Will receive State plan home and community-based services as defined in § 440.182 of this chapter.

(c) For purposes of determining eligibility under paragraph (a) of this section, the agency may not take into account an individual's resources and must use income standards that are reasonable, consistent with the objectives of the Medicaid program, simple to administer, and in the best interests of the beneficiary. Income methodologies may include use of existing income methodologies, such as the rules of the OAA, AB, APTD or AABD programs. However, subject to the Secretary's approval, the agency may use other income methodologies that meet the requirements of this paragraph.

## PART 440—SERVICES: GENERAL PROVISIONS

■ 9. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 10. Section 440.1 is amended by adding the new statutory basis 1915(i) in sequential order to read as follows:

**§ 440.1 Basis and purpose.**

* * * * *

1915(i) Home and community-based services furnished under a State plan to elderly and disabled individuals.

■ 11. Section 440.180 is amended by revising the section heading to read as follows:

**§ 440.180 Home and community-based waiver services.**

* * * * *

■ 12. Section 440.182 is added to read as follows:

**§ 440.182 State plan home and community-based services.**

(a) *Definition.* State plan home and community-based services (HCBS) benefit means the services listed in paragraph (c) of this section when provided under the State's plan (rather than through an HCBS waiver program) for individuals described in paragraph (b) of this section.

(b) *State plan HCBS coverage.* State plan HCBS can be made available to individuals who—

(1) Are eligible under the State plan and have income, calculated using the otherwise applicable rules, including any less restrictive income disregards used by the State for that group under section 1902(r)(2) of the Act, that does not exceed 150 percent of the Federal Poverty Line (FPL); and

(2) In addition to the individuals described in paragraph (b)(1) of this section, to individuals based on the State's election of the eligibility groups described in § 435.219(b) or § 436.219(b) of this chapter.

(c) *Services.* The State plan HCBS benefit consists of one or more of the following services:

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Habilitation services, which include expanded habilitation services as specified in § 440.180(c).

(7) Respite care services.

(8) Subject to the conditions in § 440.180(d)(2), for individuals with chronic mental illness:

(i) Day treatment or other partial hospitalization services;

(ii) Psychosocial rehabilitation services;

(iii) Clinic services (whether or not furnished in a facility).

(9) Other services requested by the agency and approved by the Secretary as consistent with the purpose of the benefit.

(d) *Exclusion.* FFP is not available for the cost of room and board in State plan HCBS. The following HCBS costs are not considered room or board for purposes of this exclusion:

(1) The cost of temporary food and shelter provided as an integral part of respite care services in a facility approved by the State.

(2) Meals provided as an integral component of a program of adult day health services or another service and consistent with standard procedures in the State for such a program.

(3) A portion of the rent and food costs that may be reasonably attributed to an unrelated caregiver providing State plan HCBS who is residing in the same household with the recipient, but not if the recipient is living in the home of the caregiver or in a residence that is owned or leased by the caregiver.

## PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 13. The authority citation for part 441 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 14. Section 441.301 is amended by revising paragraphs (b)(1)(i) and (b)(6) and adding paragraph (c) to read as follows:

**§ 441.301 Contents of request for a waiver.**

* * * * *

(b) * * *

(1) * * *

(i) Under a written person-centered service plan (also called plan of care) that is based on a person-centered approach and is subject to approval by the Medicaid agency.

* * * * *

(6) Be limited to one or more of the following target groups or any subgroup thereof that the State may define:

(i) Aged or disabled, or both.

(ii) Individuals with Intellectual or Developmental Disabilities, or both.

(iii) Mentally ill.

(c) A waiver request under this subpart must include the following—

(1) *Person-Centered Planning Process.* The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative. In addition to being led by the individual receiving services and supports, the person-centered planning process:

(i) Includes people chosen by the individual.

(ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.

(iii) Is timely and occurs at times and locations of convenience to the individual.

(iv) Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.

(v) Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.

(vi) Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.

(vii) Offers informed choices to the individual regarding the services and supports they receive and from whom.

(viii) Includes a method for the individual to request updates to the plan as needed.

(ix) Records the alternative home and community-based settings that were considered by the individual.

(2) *The Person-Centered Service Plan.* The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State's 1915(c) HCBS waiver, the written plan must:

(i) Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) Reflect the individual's strengths and preferences.

(iii) Reflect clinical and support needs as identified through an assessment of functional need.

(iv) Include individually identified goals and desired outcomes.

(v) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.

(vi) Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.

(vii) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.

(viii) Identify the individual and/or entity responsible for monitoring the plan.

(ix) Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.

(x) Be distributed to the individual and other people involved in the plan.

(xi) Include those services, the purpose or control of which the individual elects to self-direct.

(xii) Prevent the provision of unnecessary or inappropriate services and supports.

(xiii) Document that any modification of the additional conditions, under paragraph (c)(4)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(A) Identify a specific and individualized assessed need.

(B) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(C) Document less intrusive methods of meeting the need that have been tried but did not work.

(D) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification.

(F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(G) Include informed consent of the individual.

(H) Include an assurance that interventions and supports will cause no harm to the individual.

(3) *Review of the Person-Centered Service Plan.* The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required by § 441.365(e), at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.

(4) *Home and Community-Based Settings.* Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(v) Facilitates individual choice regarding services and supports, and who provides them.

(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

(B) Each individual has privacy in their sleeping or living unit:

(*1*) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

(*2*) Individuals sharing units have a choice of roommates in that setting.

(*3*) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.

(F) Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(*1*) Identify a specific and individualized assessed need.

(*2*) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(*3*) Document less intrusive methods of meeting the need that have been tried but did not work.

(*4*) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(*5*) Include regular collection and review of data to measure the ongoing effectiveness of the modification.

(*6*) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(*7*) Include the informed consent of the individual.

(*8*) Include an assurance that interventions and supports will cause no harm to the individual.

(5) *Settings that are not Home and Community-Based.* Home and community-based settings do not include the following:

(i) A nursing facility;

(ii) An institution for mental diseases;

(iii) An intermediate care facility for individuals with intellectual disabilities;

(iv) A hospital; or

(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

(6) *Home and Community-Based Settings: Compliance and Transition:*

(i) States submitting new and initial waiver requests must provide assurances of compliance with the requirements of this section for home and community-based settings as of the effective date of the waiver.

(ii) CMS will require transition plans for existing section 1915(c) waivers and approved state plans providing home and community-based services under section 1915(i) to achieve compliance with this section, as follows:

(A) For each approved section 1915(c) HCBS waiver subject to renewal or submitted for amendment within one year after the effective date of this regulation, the State must submit a transition plan at the time of the waiver renewal or amendment request that sets forth the actions the State will take to bring the specific waiver into compliance with this section. The waiver approval will be contingent on the inclusion of the transition plan approved by CMS. The transition plan must include all elements required by the Secretary; and within one hundred and twenty days of the submission of the first waiver renewal or amendment request the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(B) For States that do not have a section 1915(c) HCBS waiver or a section 1915(i) State plan benefit due for renewal or proposed for amendments within one year of the effective date of this regulation, the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. This plan must be submitted no later than one year after the effective date of this regulation. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(iii) A State must provide at least a 30-day public notice and comment period regarding the transition plan(s) that the State intends to submit to CMS for review and consideration, as follows:

(A) The State must at a minimum provide two (2) statements of public notice and public input procedures.

(B) The State must ensure the full transition plan(s) is available to the public for public comment.

(C) The State must consider and modify the transition plan, as the State deems appropriate, to account for public comment.

(iv) A State must submit to CMS, with the proposed transition plan:

(A) Evidence of the public notice required.

(B) A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the transition plan based upon those comments.

(v) Upon approval by CMS, the State will begin implementation of the transition plans. The State's failure to submit an approvable transition plan as required by this section and/or to comply with the terms of the approved transition plan may result in compliance actions, including but not limited to deferral/disallowance of Federal Financial Participation.

■ 15. Section 441.302 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

**§ 441.302 State assurances.**

* * * * *

(a) * * *

(4) Assurance that the State is able to meet the unique service needs of the individuals when the State elects to serve more than one target group under a single waiver, as specified in § 441.301(b)(6).

(i) On an annual basis the State will include in the quality section of the CMS–372 form (or any successor form designated by CMS) data that indicates the State continues to serve multiple target groups in the single waiver and that a single target group is not being prioritized to the detriment of other groups.

(5) Assurance that services are provided in home and community based settings, as specified in § 441.301(c)(4).

■ 16. Section 441.304 is amended by—

■ A. Revising the section heading as set forth below.

■ B. Redesignating paragraph (d) as new paragraph (g).

■ C. Adding new paragraphs (d), (e), and (f).

■ D. Revising newly designated paragraph (g).

The additions and revisions read as follows:

**§ 441.304 Duration, extension, and amendment of a waiver.**

* * * * *

(d) The agency may request that waiver modifications be made effective retroactive to the first day of a waiver year, or another date after the first day of a waiver year, in which the amendment is submitted, unless the amendment involves substantive changes as determined by CMS.

(1) Substantive changes include, but are not limited to, revisions to services available under the waiver including elimination or reduction of services, or reduction in the scope, amount, and duration of any service, a change in the qualifications of service providers, changes in rate methodology or a constriction in the eligible population.

(2) A request for an amendment that involves a substantive change as determined by CMS, may only take effect on or after the date when the amendment is approved by CMS, and must be accompanied by information on how the State has assured smooth transitions and minimal effect on individuals adversely impacted by the change.

(e) The agency must provide public notice of any significant proposed change in its methods and standards for setting payment rates for services in accordance with § 447.205 of this chapter.

(f) The agency must establish and use a public input process, for any changes in the services or operations of the waiver.

(1) This process must be described fully in the State's waiver application and be sufficient in light of the scope of the changes proposed, to ensure meaningful opportunities for input for individuals served, or eligible to be served, in the waiver.

(2) This process must be completed at a minimum of 30 days prior to implementation of the proposed change or submission of the proposed change to CMS, whichever comes first.

(3) This process must be used for both existing waivers that have substantive changes proposed, either through the renewal or the amendment process, and new waivers.

(4) This process must include consultation with Federally-recognized Tribes, and in accordance with section 5006(e) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), Indian health programs and Urban Indian Organizations.

(g)(1) If CMS finds that the Medicaid agency is not meeting one or more of the requirements for a waiver contained in this subpart, the agency is given a notice of CMS' findings and an opportunity for a hearing to rebut the findings.

(2) If CMS determines that the agency is substantively out of compliance with this subpart after the notice and any hearing, CMS may employ strategies to ensure compliance as described in paragraph (g)(3) of this section or terminate the waiver.

(3)(i) Strategies to ensure compliance may include the imposition of a moratorium on waiver enrollments, other corrective strategies as appropriate to ensure the health and welfare of waiver participants, or the withholding of a portion of Federal payment for waiver services until such time that compliance is achieved, or other actions as determined by the Secretary as necessary to address non-compliance with 1915(c) of the Act, or termination. When a waiver is terminated, the State must comport with § 441.307.

(ii) CMS will provide states with a written notice of the impending strategies to ensure compliance for a waiver program. The notice of CMS' intent to utilize strategies to ensure compliance would include the nature of the noncompliance, the strategy to be employed, the effective date of the compliance strategy, the criteria for removing the compliance strategy and the opportunity for a hearing.

■ 17. Section 441.530 is added to read as follows:

**§ 441.530 Home and Community-Based Setting.**

(a) States must make available attendant services and supports in a home and community-based setting consistent with both paragraphs (a)(1) and (a)(2) of this section.

(1) Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) Optimizes but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(v) Facilitates individual choice regarding services and supports, and who provides them.

(vi) In a provider-owned or controlled residential setting, in addition to the above qualities at paragraphs (a)(1)(i) through (v) of this section, the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in

place for each participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

(B) Each individual has privacy in their sleeping or living unit:

(*1*) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed.

(*2*) Individuals sharing units have a choice of roommates in that setting.

(*3*) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.

(F) Any modification of the additional conditions, under paragraphs (a)(1)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(*1*) Identify a specific and individualized assessed need.

(*2*) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(*3*) Document less intrusive methods of meeting the need that have been tried but did not work.

(*4*) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(*5*) Include regulation collection and review of data to measure the ongoing effectiveness of the modification.

(*6*) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(*7*) Include the informed consent of the individual.

(*8*) Include an assurance that interventions and supports will cause no harm to the individual.

(2) Home and community-based settings do not include the following:

(i) A nursing facility;

(ii) An institution for mental diseases;

(iii) An intermediate care facility for individuals with intellectual disabilities;

(iv) A hospital providing long-term care services; or

(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

(b) [Reserved]

■ 18. A new subpart M, consisting of § 441.700 through § 441.745, is added to part 441 to read as follows:

**Subpart M—State Plan Home and Community-Based Services for Elderly and Disabled Individuals**

Sec.

441.700 Basis and purpose.
441.705 State plan requirements.
441.710 State plan home and community-based services under section 1915(i)(1) of the Act.
441.715 Needs-based criteria and evaluation.
441.720 Independent assessment.
441.725 Person-centered service plan.
441.730 Provider qualifications.
441.735 Definition of individual's representative.
441.740 Self-directed services.
441.745 State plan HCBS administration: State responsibilities and quality improvement.

## Subpart M—State Plan Home and Community-Based Services for the Elderly and Individuals with Disabilities

### § 441.700 Basis and purpose.

Section 1915(i) of the Act permits States to offer one or more home and community-based services (HCBS) under their State Medicaid plans to qualified individuals with disabilities or individuals who are elderly. Those services are listed in § 440.182 of this chapter, and are described by the State, including any limitations of the services. This optional benefit is known as the State plan HCBS benefit. This subpart describes what a State Medicaid plan must provide when the State elects to include the optional benefit, and defines State responsibilities.

### § 441.705 State plan requirements.

A State plan that provides section 1915(i) of the Act State plan home and community-based services must meet the requirements of this subpart.

### § 441.710 State plan home and community-based services under section 1915(i)(1) of the Act.

(a) Home and Community-Based Setting. States must make State plan HCBS available in a home and community-based setting consistent with both paragraphs (a)(1) and (a)(2) of this section.

(1) Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person–centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(v) Facilitates individual choice regarding services and supports, and who provides them.

(vi) In a provider-owned or controlled residential setting, in addition to the above qualities at paragraphs (a)(1)(i) through (v) of this section, the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that

a lease, residency agreement or other form of written agreement will be in place for each HCBS participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law;

(B) Each individual has privacy in their sleeping or living unit:

(*1*) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors;

(*2*) Individuals sharing units have a choice of roommates in that setting; and

(*3*) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;

(D) Individuals are able to have visitors of their choosing at any time;

(E) The setting is physically accessible to the individual; and

(F) Any modification of the additional conditions, under paragraphs (a)(1)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(*1*) Identify a specific and individualized assessed need.

(*2*) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(*3*) Document less intrusive methods of meeting the need that have been tried but did not work.

(*4*) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(*5*) Include regular collection and review of data to measure the ongoing effectiveness of the modification.

(*6*) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(*7*) Include the informed consent of the individual.

(*8*) Include an assurance that interventions and supports will cause no harm to the individual.

(2) Home and community-based settings do not include the following:

(i) A nursing facility.

(ii) An institution for mental diseases.

(iii) An intermediate care facility for individuals with intellectual disabilities.

(iv) A hospital.

(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

(3) Compliance and transition:

(i) States submitting state plan amendments for new section 1915(i) of the Act benefits must provide assurances of compliance with the requirements of this section for home and community-based settings as of the effective date of the state plan amendment;

(ii) CMS will require transition plans for existing section 1915(c) waivers and approved state plans providing home and community-based services under section 1915(i) to achieve compliance with this section, as follows:

(A) For each approved section 1915(i) of the Act benefit subject to renewal or submitted for amendment within one year after the effective date of this regulation, the State must submit a transition plan at the time of the renewal or amendment request that sets forth the actions the State will take to bring the specific 1915(i) State plan benefit into compliance with this section. The approval will be contingent on the inclusion of the transition plan approved by CMS. The transition plan must include all elements required by the Secretary; and within one hundred and twenty days of the submission of the first renewal or amendment request the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(B) For States that do not have a section 1915(c) waiver or a section 1915(i) State plan benefit due for renewal or proposed for amendments within one year of the effective date of this regulation, the State must submit a transition plan detailing how the State will operate all section 1915(c) waivers and any section 1915(i) State plan benefit in accordance with this section. This plan must be submitted no later than one year after the effective date of this regulation. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.

(iii) A State must provide at least a 30-day public notice and comment period regarding the transition plan(s) that the State intends to submit to CMS for review and consideration, as follows:

(A) The State must at a minimum provide two (2) statements of public notice and public input procedures.

(B) The State must ensure the full transition plan(s) is available to the public for public comment.

(C) The State must consider and modify the transition plan, as the State deems appropriate, to account for public comment.

(iv) A State must submit to CMS, with the proposed transition plan:

(A) Evidence of the public notice required.

(B) A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the transition plan based upon those comments.

(v) Upon approval by CMS, the State will begin implementation of the transition plans. The State's failure to submit an approvable transition plan as required by this section and/or to comply with the terms of the approved transition plan may result in compliance actions, including but not limited to deferral/disallowance of Federal Financial Participation.

(b) *Needs-Based Eligibility Requirement.* Meet needs-based criteria for eligibility for the State plan HCBS benefit, as required in § 441.715(a).

(c) *Minimum State plan HCBS Requirement.* Be assessed to require at least one section 1915(i) home and community-based service at a frequency determined by the State, as required in § 441.720(a)(5).

(d) *Target Population.* Meet any applicable targeting criteria defined by the State under the authority of paragraph (e)(2) of this section.

(e) *Nonapplication.* The State may elect in the State plan amendment approved under this subpart not to apply the following requirements when determining eligibility:

(1) Section 1902(a)(10)(C)(i)(III) of the Act, pertaining to income and resource eligibility rules for the medically needy living in the community, but only for the purposes of providing State plan HCBS.

(2) Section 1902(a)(10)(B) of the Act, pertaining to comparability of Medicaid services, but only for the purposes of providing section 1915(i) State plan HCBS. In the event that a State elects not to apply comparability requirements:

(i) The State must describe the group(s) receiving State plan HCBS, subject to the Secretary's approval. Targeting criteria cannot have the impact of limiting the pool of qualified providers from which an individual would receive services, or have the impact of requiring an individual to receive services from the same entity from which they purchase their housing. These groups must be defined on the basis of any combination of the following:

(A) Age.

(B) Diagnosis.

(C) Disability.

(D) Medicaid Eligibility Group.

(ii) The State may elect in the State plan amendment to limit the availability of specific services defined under the authority of § 440.182(c) of this chapter or to vary the amount, duration, or scope of those services, to one or more of the group(s) described in this paragraph.

**§ 441.715 Needs-based criteria and evaluation.**

(a) *Needs-based criteria.* The State must establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit, and may establish needs-based criteria for each specific service. Needs-based criteria are factors used to determine an individual's requirements for support, and may include risk factors. The criteria are not characteristics that describe the individual or the individual's condition. A diagnosis is not a sufficient factor on which to base a determination of need. A criterion can be considered needs-based if it is a factor that can only be ascertained for a given person through an individualized evaluation of need.

(b) *More stringent institutional and waiver needs-based criteria.* The State plan HCBS benefit is available only if the State has in effect needs-based criteria (as defined in paragraph (a) of this section), for receipt of services in nursing facilities as defined in section 1919(a) of the Act, intermediate care facilities for individuals with intellectual disabilities as defined in § 440.150 of this chapter, and hospitals as defined in § 440.10 of this chapter for which the State has established long-term level of care (LOC) criteria, or waivers offering HCBS, and these needs-based criteria are more stringent than the needs-based criteria for the State plan HCBS benefit. If the State defines needs-based criteria for individual State plan home and community-based services, it may not have the effect of limiting who can benefit from the State plan HCBS in an unreasonable way, as determined by the Secretary.

(1) These more stringent criteria must meet the following requirements:

(i) Be included in the LOC determination process for each institutional service and waiver.

(ii) Be submitted for inspection by CMS with the State plan amendment that establishes the State Plan HCBS benefit.

(iii) Be in effect on or before the effective date of the State plan HCBS benefit.

(2) In the event that the State modifies institutional LOC criteria to meet the requirements under paragraph (b) or (c)(6) of this section that such criteria be more stringent than the State plan HCBS needs-based eligibility criteria, States may continue to receive FFP for individuals receiving institutional services or waiver HCBS under the LOC criteria previously in effect.

(c) *Adjustment authority.* The State may modify the needs-based criteria established under paragraph (a) of this section, without prior approval from the Secretary, if the number of individuals enrolled in the State plan HCBS benefit exceeds the projected number submitted annually to CMS. The Secretary may approve a retroactive effective date for the State plan amendment modifying the criteria, as early as the day following the notification period required under paragraph (c)(1) of this section, if all of the following conditions are met:

(1) The State provides at least 60 days notice of the proposed modification to the Secretary, the public, and each individual enrolled in the State plan HCBS benefit.

(2) The State notice to the Secretary is submitted as an amendment to the State plan.

(3) The adjusted needs-based eligibility criteria for the State plan HCBS benefit are less stringent than needs-based institutional and waiver LOC criteria in effect after the adjustment.

(4) Individuals who were found eligible for the State plan HCBS benefit before modification of the needs-based criteria under this adjustment authority must remain eligible for the HCBS benefit until such time as:

(i) The individual no longer meets the needs-based criteria used for the initial determination of eligibility; or

(ii) The individual is no longer eligible for or enrolled in Medicaid or the HCBS benefit.

(5) Any changes in service due to the modification of needs-based criteria under this adjustment authority are treated as actions as defined in § 431.201 of this chapter and are subject to the requirements of part 431, subpart E of this chapter.

(6) In the event that the State also needs to modify institutional level of care criteria to meet the requirements under paragraph (b) of this section that such criteria be more stringent than the State plan HCBS needs-based eligibility criteria, the State may adjust the modified institutional LOC criteria under this adjustment authority. The adjusted institutional LOC criteria must be at least as stringent as those in effect before they were modified to meet the requirements in paragraph (b) of this section.

(d) *Independent evaluation and determination of eligibility.* Eligibility for the State plan HCBS benefit must be determined through an independent evaluation of each individual according to the requirements of this subpart. The independent evaluation complies with the following requirements:

(1) Is performed by an agent that is independent and qualified as defined in § 441.730.

(2) Applies the needs-based eligibility criteria that the State has established under paragraph (a) of this section, and the general eligibility requirements under § 435.219 and § 436.219 of this chapter.

(3) Includes consultation with the individual, and if applicable, the individual's representative as defined under § 441.735.

(4) Assesses the individual's support needs.

(5) Uses only current and accurate information from existing records, and obtains any additional information necessary to draw valid conclusions about the individual's support needs.

(6) Evaluations finding that an individual is not eligible for the State plan HCBS benefit are treated as actions defined in § 431.201 of this chapter and are subject to the requirements of part 431 subpart E of this chapter.

(e) *Periodic redetermination.* Independent reevaluations of each individual receiving the State plan HCBS benefit must be performed at least every 12 months, to determine whether the individual continues to meet eligibility requirements. Redeterminations must meet the requirements of paragraph (d) of this section.

**§ 441.720 Independent assessment.**

(a) *Requirements.* For each individual determined to be eligible for the State plan HCBS benefit, the State must provide for an independent assessment of needs, which may include the results of a standardized functional needs assessment, in order to establish a service plan. In applying the requirements of section 1915(i)(1)(F) of the Act, the State must:

(1) Perform a face-to-face assessment of the individual by an agent who is independent and qualified as defined in § 441.730, and with a person-centered process that meets the requirements of § 441.725(a) and is guided by best practice and research on effective strategies that result in improved health and quality of life outcomes.

(i) For the purposes of this section, a face-to-face assessment may include assessments performed by telemedicine, or other information technology medium, if the following conditions are met:

(A) The agent performing the assessment is independent and qualified as defined in § 441.730 and meets the provider qualifications defined by the State, including any additional qualifications or training requirements for the operation of required information technology.

(B) The individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff.

(C) The individual provides informed consent for this type of assessment.

(ii) [Reserved]

(2) Conduct the assessment in consultation with the individual, and if applicable, the individual's authorized representative, and include the opportunity for the individual to identify other persons to be consulted, such as, but not limited to, the individual's spouse, family, guardian, and treating and consulting health and support professionals responsible for the individual's care.

(3) Examine the individual's relevant history including the findings from the independent evaluation of eligibility, medical records, an objective evaluation of functional ability, and any other records or information needed to develop the person-centered service plan as required in § 441.725.

(4) Include in the assessment the individual's physical, cognitive, and behavioral health care and support needs, strengths and preferences, available service and housing options, and if unpaid caregivers will be relied upon to implement any elements of the person-centered service plan, a caregiver assessment.

(5) For each service, apply the State's additional needs-based criteria (if any) that the individual may require. Individuals are considered enrolled in the State plan HCBS benefit only if they meet the eligibility and needs-based criteria for the benefit, and are also assessed to require and receive at least one home and community-based service offered under the State plan for medical assistance.

(6) Include in the assessment, if the State offers individuals the option to self-direct a State plan home and community-based service or services, any information needed for the self-directed portion of the service plan, as required in § 441.740(b), including the ability of the individual (with and without supports) to exercise budget or employer authority.

(7) Include in the assessment, for individuals receiving habilitation services, documentation that no Medicaid services are provided which would otherwise be available to the individual, specifically including but not limited to services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the Individuals with Disabilities Education Improvement Act of 2004.

(8) Include in the assessment and subsequent service plan, for individuals receiving Secretary approved services under the authority of § 440.182 of this chapter, documentation that no State plan HCBS are provided which would otherwise be available to the individual through other Medicaid services or other Federally funded programs.

(9) Include in the assessment and subsequent service plan, for individuals receiving HCBS through a waiver approved under § 441.300, documentation that HCBS provided through the State plan and waiver are not duplicative.

(10) Coordinate the assessment and subsequent service plan with any other assessment or service plan required for services through a waiver authorized under section 1115 or section 1915 of the Social Security Act.

(b) *Reassessments.* The independent assessment of need must be conducted at least every 12 months and as needed when the individual's support needs or circumstances change significantly, in order to revise the service plan.

**§ 441.725 Person-centered service plan.**

(a) *Person-centered planning process.* Based on the independent assessment required in § 441.720, the State must develop (or approve, if the plan is developed by others) a written service plan jointly with the individual (including, for purposes of this paragraph, the individual and the individual's authorized representative if applicable). The person-centered planning process is driven by the individual. The process:

(1) Includes people chosen by the individual.

(2) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.

(3) Is timely and occurs at times and locations of convenience to the individual.

(4) Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.

(5) Includes strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants.

(6) Offers choices to the individual regarding the services and supports the individual receives and from whom.

(7) Includes a method for the individual to request updates to the plan, as needed.

(8) Records the alternative home and community-based settings that were considered by the individual.

(b) The person-centered service plan. The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State plan HCBS benefit, the written plan must:

(1) Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

(2) Reflect the individual's strengths and preferences.

(3) Reflect clinical and support needs as identified through an assessment of functional need.

(4) Include individually identified goals and desired outcomes.

(5) Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of State plan HCBS.

(6) Reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed.

(7) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.

(8) Identify the individual and/or entity responsible for monitoring the plan.

(9) Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.

(10) Be distributed to the individual and other people involved in the plan.

(11) Include those services, the purchase or control of which the individual elects to self-direct, meeting the requirements of § 441.740.

(12) Prevent the provision of unnecessary or inappropriate services and supports.

(13) Document that any modification of the additional conditions, under § 441.710(a)(1)(vi)(A) through (D) of this chapter, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

(i) Identify a specific and individualized assessed need.

(ii) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

(iii) Document less intrusive methods of meeting the need that have been tried but did not work.

(iv) Include a clear description of the condition that is directly proportionate to the specific assessed need.

(v) Include a regular collection and review of data to measure the ongoing effectiveness of the modification.

(vi) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(vii) Include informed consent of the individual; and

(viii) Include an assurance that the interventions and supports will cause no harm to the individual.

(c) Reviewing the person-centered service plan. The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required in § 441.720, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

**§ 441.730 Provider qualifications.**

(a) *Requirements.* The State must provide assurances that necessary safeguards have been taken to protect the health and welfare of enrollees in State plan HCBS, and must define in writing standards for providers (both agencies and individuals) of HCBS and for agents conducting individualized independent evaluation, independent assessment, and service plan development.

(b) *Conflict of interest standards.* The State must define conflict of interest standards that ensure the independence of individual and agency agents who conduct (whether as a service or an administrative activity) the independent evaluation of eligibility for State plan HCBS, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan. The conflict of interest standards apply to all individuals and entities, public or private. At a minimum, these agents must not be any of the following:

(1) Related by blood or marriage to the individual, or to any paid caregiver of the individual.

(2) Financially responsible for the individual.

(3) Empowered to make financial or health-related decisions on behalf of the individual.

(4) Holding financial interest, as defined in § 411.354 of this chapter, in any entity that is paid to provide care for the individual.

(5) Providers of State plan HCBS for the individual, or those who have an interest in or are employed by a provider of State plan HCBS for the individual, except when the State demonstrates that the only willing and qualified agent to perform independent assessments and develop person-centered service plans in a geographic area also provides HCBS, and the State devises conflict of interest protections including separation of agent and provider functions within provider entities, which are described in the State plan for medical assistance and approved by the Secretary, and individuals are provided with a clear and accessible alternative dispute resolution process.

(c) *Training.* Qualifications for agents performing independent assessments and plans of care must include training in assessment of individuals whose physical, cognitive, or mental conditions trigger a potential need for home and community-based services and supports, and current knowledge of available resources, service options, providers, and best practices to improve health and quality of life outcomes.

**§ 441.735 Definition of individual's representative.**

In this subpart, the term *individual's representative* means, with respect to an individual being evaluated for, assessed regarding, or receiving State plan HCBS, the following:

(a) The individual's legal guardian or other person who is authorized under State law to represent the individual for the purpose of making decisions related to the person's care or well-being. In instances where state law confers decision-making authority to the individual representative, the individual will lead the service planning process to the extent possible.

(b) Any other person who is authorized under § 435.923 of this chapter, or under the policy of the State Medicaid Agency to represent the individual, including but not limited to, a parent, a family member, or an advocate for the individual.

(c) When the State authorizes representatives in accordance with paragraph (b) of this section, the State must have policies describing the process for authorization; the extent of decision-making authorized; and safeguards to ensure that the representative uses substituted judgment on behalf of the individual. State policies must address exceptions to using substituted judgment when the individual's wishes cannot be ascertained or when the individual's wishes would result in substantial harm to the individual. States may not refuse the authorized representative that the individual chooses, unless in the process of applying the requirements for authorization, the State discovers and can document evidence that the representative is not acting in accordance with these policies or cannot perform the required functions. States must continue to meet the requirements regarding the person-

centered planning process at § 441.725 of this chapter.

**§ 441.740 Self-directed services.**

(a) *State option.* The State may choose to offer an election for self-directing HCBS. The term ''self-directed'' means, with respect to State plan HCBS listed in § 440.182 of this chapter, services that are planned and purchased under the direction and control of the individual, including the amount, duration, scope, provider, and location of the HCBS. For purposes of this paragraph, individual means the individual and, if applicable, the individual's representative as defined in § 441.735.

(b) *Service plan requirement.* Based on the independent assessment required in § 441.720, the State develops a service plan jointly with the individual as required in § 441.725. If the individual chooses to direct some or all HCBS, the service plan must meet the following additional requirements:

(1) Specify the State plan HCBS that the individual will be responsible for directing.

(2) Identify the methods by which the individual will plan, direct or control services, including whether the individual will exercise authority over the employment of service providers and/or authority over expenditures from the individualized budget.

(3) Include appropriate risk management techniques that explicitly recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of this plan based upon the resources and support needs of the individual.

(4) Describe the process for facilitating voluntary and involuntary transition from self-direction including any circumstances under which transition out of self-direction is involuntary. There must be state procedures to ensure the continuity of services during the transition from self-direction to other service delivery methods.

(5) Specify the financial management supports, as required in paragraph (e) of this section, to be provided.

(c) *Employer authority.* If the person-centered service plan includes authority to select, manage, or dismiss providers of the State plan HCBS, the person-centered service plan must specify the authority to be exercised by the individual, any limits to the authority, and specify parties responsible for functions outside the authority the individual exercises.

(d) *Budget authority.* If the person-centered service plan includes an individualized budget (which identifies the dollar value of the services and supports under the control and direction of the individual), the person-centered service plan must meet the following requirements:

(1) Describe the method for calculating the dollar values in the budget, based on reliable costs and service utilization.

(2) Define a process for making adjustments in dollar values to reflect changes in an individual's assessment and service plan.

(3) Provide a procedure to evaluate expenditures under the budget.

(4) Not result in payment for medical assistance to the individual.

(e) *Functions in support of self-direction.* When the State elects to offer self-directed State plan HCBS, it must offer the following individualized supports to individuals receiving the services and their representatives:

(1) Information and assistance consistent with sound principles and practice of self-direction.

(2) Financial management supports to meet the following requirements:

(i) Manage Federal, State, and local employment tax, labor, worker's compensation, insurance, and other requirements that apply when the individual functions as the employer of service providers.

(ii) Make financial transactions on behalf of the individual when the individual has personal budget authority.

(iii) Maintain separate accounts for each individual's budget and provide periodic reports of expenditures against budget in a manner understandable to the individual.

(3) Voluntary training on how to select, manage, and dismiss providers of State plan HCBS.

**§ 441.745 State plan HCBS administration: State responsibilities and quality improvement.**

(a) *State plan HCBS administration.*

(1) *State responsibilities.* The State must carry out the following responsibilities in administration of its State plan HCBS:

(i) *Number served.* The State will annually provide CMS with the projected number of individuals to be enrolled in the benefit and the actual number of unduplicated individuals enrolled in State plan HCBS in the previous year.

(ii) *Access to services.* The State must grant access to all State plan HCBS assessed to be needed in accordance with a service plan consistent with § 441.725, to individuals who have been determined to be eligible for the State plan HCBS benefit, subject to the following requirements:

(A) A State must determine that provided services meet medical necessity criteria.

(B) A State may limit access to services through targeting criteria established by § 441.710(e)(2).

(C) A State may not limit access to services based upon the income of eligible individuals, the cost of services, or the individual's location in the State.

(iii) *Appeals.* A State must provide individuals with advance notice of and the right to appeal terminations, suspensions, or reductions of Medicaid eligibility or covered services as described in part 431, subpart E.

(2) *Administration.*

(i) *Option for presumptive payment.*

(A) The State may provide for a period of presumptive payment, not to exceed 60 days, for Medicaid eligible individuals the State has reason to believe may be eligible for the State plan HCBS benefit. FFP is available for both services that meet the definition of medical assistance and necessary administrative expenditures for evaluation of eligibility for the State plan HCBS benefit under § 441.715(d) and assessment of need for specific HCBS under § 441.720(a), prior to an individual's receipt of State plan HCBS or determination of ineligibility for the benefit.

(B) If an individual the State has reason to believe may be eligible for the State plan HCBS benefit is evaluated and assessed under the presumptive payment option and found not to be eligible for the benefit, FFP is available for services that meet the definition of medical assistance and necessary administrative expenditures. The individual so determined will not be considered to have enrolled in the State plan HCBS benefit for purposes of determining the annual number of participants in the benefit.

(ii) *Option for Phase-in of Services and Eligibility*

(A) In the event that a State elects to establish targeting criteria through § 441.710(e)(2), the State may limit the enrollment of individuals or the provision services to enrolled individuals based upon criteria described in a phase-in plan, subject to CMS approval. A State which elects to target the State plan HCBS benefit and to phase-in enrollment and/or services must submit a phase-in plan for approval by CMS that describes, at a minimum:

(*1*) The criteria used to limit enrollment or service delivery.

(*2*) The rationale for phasing-in services and/or eligibility.

(*3*) Timelines and benchmarks to ensure that the benefit is available

statewide to all eligible individuals within the initial 5-year approval.

(B) If a State elects to phase-in the enrollment of individuals based on highest need, the phase-in plan must use the needs-based criteria described in § 441.715(a) to establish priority for enrollment. Such criteria must be based upon the assessed need of individuals, with higher-need individuals receiving services prior to individuals with lower assessed need.

(C) If a State elects to phase-in the provision of any services, the phase-in plan must include a description of the services that will not be available to all eligible individuals, the rationale for limiting the provision of services, and assurance that all individuals with access to a willing and qualified provider may receive services.

(D) The plan may not include a cap on the number of enrollees.

(E) The plan must include a timeline to assure that all eligible individuals receive all included services prior to the end of the first 5-year approval period, described in paragraph (a)(2)(vi) of this section.

(iii) *Reimbursement methodology.* The State plan amendment to provide State plan HCBS must contain a description of the reimbursement methodology for each covered service, in accordance with CMS sub-regulatory guidance. To the extent that the reimbursement methodologies for any self-directed services differ from those descriptions, the method for setting reimbursement methodology for the self-directed services must also be described.

(iv) *Operation.* The State plan amendment to provide State plan HCBS must contain a description of the State Medicaid agency line of authority for operating the State plan HCBS benefit, including distribution of functions to other entities.

(v) *Modifications.* The agency may request that modifications to the benefit be made effective retroactive to the first day of a fiscal year quarter, or another date after the first day of a fiscal year quarter, in which the amendment is submitted, unless the amendment involves substantive change. Substantive changes may include, but are not limited to, the following:

(A) Revisions to services available under the benefit including elimination or reduction in services, and changes in the scope, amount and duration of the services.

(B) Changes in the qualifications of service providers, rate methodology, or the eligible population.

(*1*) *Request for Amendments.* A request for an amendment that involves a substantive change as determined by CMS—

(*i*) May only take effect on or after the date when the amendment is approved by CMS; and

(*ii*) Must be accompanied by information on how the State will ensure for transitions with minimal adverse impact on individuals impacted by the change.

(*2*) [Reserved]

(vi) *Periods of approval.*

(A) If a State elects to establish targeting criteria through § 441.710(e)(2)(i), the approval of the State Plan Amendment will be in effect for a period of 5 years from the effective date of the amendment. To renew State plan HCBS for an additional 5-year period, the State must provide a written request for renewal to CMS at least 180 days prior to the end of the approval period. CMS approval of a renewal request is contingent upon State adherence to Federal requirements and the state meeting its objectives with respect to quality improvement and beneficiary outcomes.

(B) If a State does not elect to establish targeting criteria through § 441.710(e)(2)(i), the limitations on length of approval does not apply.

(b) *Quality improvement strategy: Program performance and quality of care.* States must develop and implement an HCBS quality improvement strategy that includes a continuous improvement process and measures of program performance and experience of care. The strategy must be proportionate to the scope of services in the State plan HCBS benefit and the number of individuals to be served. The State will make this information available to CMS at a frequency determined by the Secretary or upon request.

(1) *Quality Improvement Strategy.* The quality improvement strategy must include all of the following:

(i) Incorporate a continuous quality improvement process that includes monitoring, remediation, and quality improvement.

(ii) Be evidence-based, and include outcome measures for program performance, quality of care, and individual experience as determined by the Secretary.

(iii) Provide evidence of the establishment of sufficient infrastructure to implement the program effectively.

(iv) Measure individual outcomes associated with the receipt of HCBS, related to the implementation of goals included in the individual service plan.

(2) [Reserved]

## PART 447—PAYMENTS FOR SERVICES

■ 19. The authority citation for part 447 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 20. Section 447.10 is amended by adding new paragraph (g)(4) to read as follows:

### § 447.10 Prohibition against reassignment of provider claims.

* * * * *

(g) * * *

(4) In the case of a class of practitioners for which the Medicaid program is the primary source of service revenue, payment may be made to a third party on behalf of the individual practitioner for benefits such as health insurance, skills training and other benefits customary for employees.

* * * * *

**Authority:** (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 18, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: December 9, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–00487 Filed 1–10–14; 11:15 am]

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Part III

## Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Disallowance of Partnership Loss Transfers, Mandatory Basis Adjustments, Basis Reduction in Stock of a Corporate Partner, Modification of Basis Allocation Rules for Substituted Basis Transactions, Miscellaneous Provisions; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–144468–05]**

**RIN 1545–BE98**

## Disallowance of Partnership Loss Transfers, Mandatory Basis Adjustments, Basis Reduction in Stock of a Corporate Partner, Modification of Basis Allocation Rules for Substituted Basis Transactions, Miscellaneous Provisions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** The proposed regulations provide guidance on certain provisions of the American Jobs Creation Act of 2004 and conform the regulations to statutory changes in the Taxpayer Relief Act of 1997. The proposed regulations also modify the basis allocation rules to prevent certain unintended consequences of the current basis allocation rules for substituted basis transactions. Finally, the proposed regulations provide additional guidance on allocations resulting from revaluations of partnership property. The proposed regulations affect partnerships and their partners. This document also contains a notice of a public hearing on these proposed regulations.

**DATES:** Comments must be received by April 16, 2014. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for April 30, 2014, at 10 a.m., must be received by April 16, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–144468–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–144468–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–144468–05).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Wendy Kribell or Benjamin Weaver at (202) 317–6850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 17, 2014. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in the proposed regulations are in proposed §§ 1.704–3(f), 1.734–1(d), 1.743–1(k), and 1.743–1(n). This information will be used by the IRS to assure compliance with certain provisions of the American Jobs Creation Act of 2004. The collections of information are either required to obtain a benefit or are mandatory. The likely respondents are individuals and partnerships.

The burden for the collection of information in § 1.704–3(f) is as follows:

Estimated total annual reporting burden: 324,850 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 162,425.

Estimated annual frequency of responses: On occasion.

The burden for the collection of information in § 1.734–1(d) is as follows:

Estimated total annual reporting burden: 1,650 hours.

Estimated average annual burden per respondent: 3 hours.

Estimated number of respondents: 550.

Estimated annual frequency of responses: On occasion.

The burden for the collection of information in § 1.743–1(k)(1) is as follows:

Estimated total annual reporting burden: 1,650 hours.

Estimated average annual burden per respondent: 3 hours.

Estimated number of respondents: 550.

Estimated annual frequency of responses: On occasion.

The burden for the collection of information in § 1.743–1(k)(2) is as follows:

Estimated total annual reporting burden: 550 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 550.

Estimated annual frequency of responses: On occasion.

The burden for the collection of information in § 1.743–1(n)(10) is as follows:

Estimated total annual reporting burden: 3,600.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 3,600.

Estimated annual frequency of responses: Various.

The burden for the collection of information in § 1.743–1(n)(11) is as follows:

Estimated total annual reporting burden: 2,700.

Estimated average annual burden per respondent: 1.5 hours.

Estimated number of respondents: 1,800.

Estimated annual frequency of responses: On occasion

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 section 6103.

### Background

*1. Contributions of Built-in Loss Property*

Under section 721(a) of the Internal Revenue Code (the Code), if a partner contributes property in exchange for a partnership interest, neither the partners

nor the partnership recognize gain or loss. Section 722 provides that when a partner contributes property to a partnership, the basis in the partnership interest received equals the adjusted basis of the contributed property. Similarly, under section 723, the partnership's adjusted basis in the contributed property equals the contributing partner's adjusted basis in the property. Section 704(c)(1)(A) requires the partnership to allocate items of partnership income, gain, loss, and deduction with respect to contributed property among the partners so as to take into account any built-in gain or built-in loss in the contributed property. This rule is intended to prevent the transfer of built-in gain or built-in loss from the contributing partner to other partners. If a partner contributes built-in gain or built-in loss property to a partnership and later transfers the interest in the partnership, § 1.704–3(a)(7) provides that the built-in gain or built-in loss must be allocated to the transferee as it would have been allocated to the transferor.

Section 833(a) of the American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (the AJCA) added section 704(c)(1)(C) to the Code for contributions of built-in loss property to partnerships after October 22, 2004. In general, section 704(c)(1)(C) provides that a partner's built-in loss may only be taken into account in determining the contributing partner's share of partnership items. Prior to the AJCA, a contributing partner could transfer losses to a transferee partner or other partners when the contributing partner was no longer a partner in the partnership. *See* H. R. Rep. 108–548 at 282 (2004) (House Committee Report) and H.R. Rep. 108–755 at 622 (2004) (Conference Report). Thus, Congress enacted section 704(c)(1)(C) to prevent the inappropriate transfer of built-in losses to partners other than the contributing partner. *See* House Committee Report, at 283. More specifically, Congress enacted section 704(c)(1)(C) to prevent a transferee partner from receiving an allocation of the transferor partner's share of losses relating to the transferor's contribution of built-in loss property and to prevent remaining partners from receiving an allocation of a distributee partner's share of losses relating to the distributee's contribution of built-in loss property when the distributee receives a liquidating distribution. *See* House Committee Report, at 282 and Conference Report, at 621–622. To that end, section 704(c)(1)(C) provides that if property contributed to a partnership has a built-in loss, (i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner; and (ii) except as provided by regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership is equal to its fair market value at the time of the contribution. For purposes of section 704(c)(1)(C), the term *built-in loss* means the excess of the adjusted basis of the property (determined without regard to section 704(c)(1)(C)(ii)) over its fair market value at the time of contribution.

*2. Mandatory Basis Adjustment Provisions*

a. Overview

The mandatory basis adjustment provisions in section 833(b) and (c) of the AJCA reflect Congress' belief that the ''electivity of partnership basis adjustments upon transfers and distributions leads to anomalous tax results, causes inaccurate income measurement, and gives rise to opportunities for tax sheltering.'' *See* S. Rep. 108–192 at 189 (2003) (Grassley Report). Specifically, Congress was concerned that the optional basis adjustment regime permitted partners to duplicate losses and inappropriately transfer losses among partners. *Id.* According to the legislative history, Congress intended these amendments to prevent the inappropriate transfer of losses among partners, while preserving the simplification aspects of the existing partnership rules for transactions involving smaller amounts (as described in this preamble, a $250,000 threshold). *See* House Committee Report, at 283. Thus, section 743 and section 734 were amended as described in sections 2.b. and 2.c. of the background section of this preamble.

b. Section 743 Substantial Built-In Loss Provisions

i. In General

Before the enactment of the AJCA, under section 743(a), upon the transfer of a partnership interest by sale or exchange or upon the death of a partner, a partnership was not required to adjust the basis of partnership property unless the partnership had a section 754 election in effect. If the partnership had a section 754 election in effect at the time of a transfer, section 743(b) required the partnership to increase or decrease the adjusted basis of the partnership property to take into account the difference between the transferee's proportionate share of the adjusted basis of the partnership property and the transferee's basis in its partnership interest.

As amended by the AJCA, section 743(a) and (b) require a partnership to adjust the basis of partnership property upon a sale or exchange of an interest in the partnership or upon the death of a partner if there is a section 754 election in effect, or, for transfers after October 22, 2004, if the partnership has a substantial built-in loss immediately after the transfer (regardless of whether the partnership has a section 754 election in effect). Section 743(d)(1) provides that, for purposes of section 743, a partnership has a substantial built-in loss if the partnership's adjusted basis in the partnership property exceeds the fair market value of the property by more than $250,000. Section 743(d)(2) provides that the Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of section 743(d)(1), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

ii. Electing Investment Partnerships

Section 833(b) of the AJCA also added section 743(e) to the Code, which provides alternative rules for electing investment partnerships (EIPs). According to the legislative history, Congress was aware that mandating section 743(b) adjustments would impose administrative difficulties on certain types of investment partnerships that are engaged in investment activities and that typically did not make section 754 elections prior to the AJCA, even when the adjustments to the bases of partnership property would be upward adjustments. *See* House Committee Report, at 283. Accordingly, for partnerships that meet the requirements of an EIP in section 743(e)(6) and that elect to apply the provisions of section 743(e), section 743(e)(1) provides that for purposes of section 743, an EIP shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the EIP election is in effect. Instead, section 743(e)(2) provides that, in the case of a transfer of an interest in an EIP, the transferee's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under section 743(e)(2)) on the transfer of the partnership

interest. Section 743(e)(3) further provides that losses disallowed under section 743(e)(2) shall not decrease the transferee's basis in the partnership interest. In the case of partnership property that has a built-in loss at the time of the transfer, the loss disallowance rules in section 743(e)(2) and (e)(3) approximate the effect of a basis adjustment and prevent the transferee from taking into account an allocation of the preexisting built-in loss (and the corresponding basis reduction) without requiring the partnership to adjust the bases of all partnership property. In addition, section 743(e)(5) provides that in the case of a transferee whose basis in distributed partnership property is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer that is taken into account under section 743(e)(2) shall be reduced by the amount of such basis reduction.

Section 743(e)(6) defines an *electing investment partnership* as any partnership if (A) the partnership makes an election to have section 743(e) apply; (B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of the Act; (C) the partnership has never been engaged in a trade or business; (D) substantially all of the assets of the partnership are held for investment; (E) at least 95 percent of the assets contributed to the partnership consist of money; (F) no assets contributed to the partnership had an adjusted basis in excess of fair market value at the time of contribution; (G) all partnership interests are issued pursuant to a private offering before the date that is 24 months after the date of the first capital contribution to the partnership; (H) the partnership agreement has substantive restrictions on each partner's ability to cause a redemption of the partner's interest; and (I) the partnership agreement provides for a term that is not in excess of 15 years. The flush language of section 743(e)(6) provides that the EIP election, once made, shall be irrevocable except with the consent of the Secretary. Section 833(d) of the AJCA provides a transition rule with respect to section 743(e)(6)(H) and (I) for partnerships eligible to make an election to be an EIP that were in existence on June 4, 2004. For those partnerships, section 743(e)(6)(H) does not apply and the term in section 743(e)(6)(I) is 20 years.

According to the legislative history, Congress expected EIPs to include venture capital funds, buyout funds, and funds of funds. *See* Conference Report, at 626. The legislative history further indicates that, with respect to the requirement in section 743(e)(6)(G), Congress intended that ''dry'' closings in which partnership interests are issued without the contribution of capital not start the running of the 24-month period. *Id.* Furthermore, with respect to the requirement in section 743(e)(6)(H), Congress provided illustrative examples of substantive restrictions: a violation of Federal or State law (such as ERISA or the Bank Holding Company Act) or an imposition of the Federal excise tax on, or a change in the Federal tax-exempt status of, a tax-exempt partner. *Id.*

Section 743(e)(4) also provides that section 743(e) shall be applied without regard to any termination of a partnership under section 708(b)(1)(B). Finally, section 743(e)(7) provides that the Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of section 743(e), including regulations for applying section 743(e) to tiered partnerships.

Section 833(b) of the AJCA prescribed certain reporting requirements for EIPs by adding section 6031(f) to the Code. Section 6031(f) provides that in the case of an EIP, the information required under section 6031(b) (relating to furnishing copies of returns of partnership income to partners) to be furnished to a partner to whom section 743(e)(2) applies shall include information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).

On April 1, 2005, the Treasury Department and the IRS issued Notice 2005–32 (2005–1 CB 895), which provides, in part, interim procedures and reporting requirements for EIPs; interim procedures for transferors of EIP interests; and guidance regarding whether a partnership is engaged in a trade or business for purposes of section 743(e)(6)(C). Public comments on Notice 2005–32 are discussed in Parts 2.a.i and 2.a.ii of the Explanation of Provisions section of this preamble. *See* § 601.601(d)(2)(ii)(b).

iii. Securitization Partnerships

Finally, section 833 of the AJCA added section 743(f) to the Code, which provides an exception from the mandatory basis adjustment provisions in section 743(a) and (b) for securitization partnerships. Section 743(f)(1) states that for purposes of section 743, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer. Section 743(f)(2) provides that the term *securitization partnership* means a partnership the sole business activity of which is to issue securities that provide for a fixed principal (or similar) amount and that are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of. For purposes of the ''reasonable belief'' standard, the legislative history indicates that Congress intended rules similar to the rules in § 1.860G–2(a)(3) (relating to a reasonable belief safe harbor for obligations principally secured by an interest in real property) to apply. *See* Conference Report, at 627. Furthermore, Congress did not intend for the mandatory basis adjustment rules to be avoided by securitization partnerships through dispositions of pool assets. *Id.* Finally, the legislative history states that if a partnership ceases to meet the qualifications of a securitization partnership, the mandatory basis adjustment provisions apply to the first transfer thereafter and to each subsequent transfer. *Id.*

c. Section 734 Substantial Basis Reduction Provisions

Section 734(b) requires a partnership to increase or decrease the adjusted basis of partnership property to take into account any gain or loss recognized to the distributee and the difference between the partnership's and the distributee's bases in distributed property. Similar to section 743, prior to the AJCA, section 734(a) did not require a partnership to adjust the basis of partnership property upon a distribution of partnership property to a partner unless the partnership had a section 754 election in effect.

Consistent with the amendments to section 743, section 833(c) of the AJCA amended section 734(a) and (b) to require a partnership to adjust the basis of partnership property upon a distribution of partnership property to a partner if there is a section 754 election in effect or, for distributions occurring after October 22, 2004, if there is a substantial basis reduction with respect to the distribution. Section 734(d)(1) provides that for purposes of section 734, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in section 734(b)(2)(A) and 734(b)(2)(B) exceeds $250,000. The amount described in section 734(b)(2)(A) is the amount of loss recognized to the distributee partner with respect to the distribution under section 731(a)(2). The amount described in section

734(b)(2)(B) is, in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)). Section 734(d)(2) provides regulatory authority for the Secretary to carry out the purposes of section 734(d) by cross-reference to section 743(d)(2). Section 743(d)(2) is discussed in Part 2.b.i of the Background section of this preamble.

As with section 743(b) adjustments, section 734(e) provides an exception to the mandatory basis adjustment provisions in section 734 for securitization partnerships. A securitization partnership (which is defined by reference to section 743(f)) is not treated as having a substantial basis reduction with respect to any distribution of property to a partner. *See* Part 2.b.iii of the Background section of this preamble for the definition of securitization partnership in section 743(f). Like the rules under section 743, the mandatory basis adjustment provisions under section 734 will apply with respect to the first distribution that occurs after the partnership ceases to meet the definition of a securitization partnership and to each subsequent distribution.

d. Interim Reporting Requirements for Mandatory Basis Adjustments

The Treasury Department and the IRS issued general interim procedures for mandatory basis adjustments under sections 734 and 743. These interim procedures, which are described in Notice 2005–32, state that until further guidance is provided, partnerships required to reduce the bases of partnership properties under the substantial basis reduction provisions in section 734 must comply with § 1.734–1(d) as if an election under section 754 were in effect at the time of the relevant distribution. Similarly, partnerships that are required to reduce the bases of partnership properties under the substantial built-in loss provisions in section 743 must comply with § 1.743–1(k)(1), (3), (4), and (5) as if an election under section 754 were in effect at the time of the relevant transfer. Furthermore, a transferee of an interest in a partnership that is required to reduce the bases of partnership properties under the substantial built-in loss provisions must comply with § 1.743–1(k)(2) as if an election under section 754 were in effect at the time of the relevant transfer.

*3. Section 755 Rules for Allocation of Basis*

a. Section 755(c)

If section 734(a) requires a basis adjustment (either because the partnership has a section 754 election in effect or because there is a substantial basis reduction with respect to the distribution), section 734(b) provides that the partnership increases or decreases the basis of partnership property by any gain or loss recognized by the distributee and the difference (if any) between the partnership's and the distributee's adjusted bases in the distributed property. Section 755(a) generally provides that any increase or decrease in the adjusted basis of partnership property under section 734(b) shall be allocated in a manner that: (1) reduces the difference between the fair market value and the adjusted basis of partnership properties, or (2) in any other manner permitted by regulations. Generally, section 755(b) requires a partnership to allocate increases or decreases in the adjusted basis of partnership property arising from the distribution of property to property of a like character to the property distributed (either to (1) capital assets and property described in section 1231(b), or (2) any other property).

According to the Joint Committee on Taxation's (the JCT's) investigative report of Enron Corporation (*See* Joint Committee on Taxation, Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations, JCS–3–03 (February 2003) (JCT Enron Report)), taxpayers were engaging in transactions to achieve unintended tax results through the interaction of these partnership basis adjustment rules and the rules in section 1032 protecting a corporation from recognizing gain on its stock. Section 1032(a) provides that no gain or loss is recognized to a corporation on the receipt of money or other property in exchange for stock of the corporation. In particular, the JCT Enron Report describes Enron Corporation's Project Condor as structured to take advantage of the interaction between sections 754 and 1032 by increasing the basis of depreciable assets under section 732 while decreasing the basis under section 734(b) of preferred stock of a corporate partner held by the partnership. The step down in the basis of the corporate partner's preferred stock had no ultimate tax effect because the corporate partner could avoid recognizing the gain in the stock through section 1032, which prevents a corporation from recognizing gain on the sale of its stock. The transaction thus duplicated tax deductions at no economic cost. *See* Grassley Report, at 127 and House Committee Report, at 287. The JCT expressed specific concern about the exclusion of gain under section 1032 following a negative basis adjustment under section 734(b) to stock of a corporate partner. JCT Enron Report, at 220–21. Therefore, the JCT recommended that the partnership basis rules preclude an increase in basis to an asset if the offsetting basis reduction would be allocated to stock of a partner (or related party). *Id.* at 221.

In response to these recommendations, section 834(a) of the AJCA enacted section 755(c), which provides that in making an allocation under section 755(a) of any decrease in the adjusted basis of partnership property under section 734(b)—(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) that is a partner in the partnership, and (2) any amount not allocable to stock by reason of section 755(c)(1) shall be allocated under section 755(a) to other partnership property. The flush language of section 755(c) further provides that a partnership recognizes gain to the extent that the amount required to be allocated under section 755(c)(2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the required allocation.

b. Basis Adjustment Allocation Rules for Substituted Basis Transactions

A basis adjustment under section 743(a) is determined in accordance with section 743(b). The partnership must allocate any increase or decrease in the adjusted basis of partnership property required under section 743(b) under the rules of section 755. Section 1.755–1(b)(5) provides additional guidance on how to allocate basis adjustments under section 743(b) that result from substituted basis transactions, which are defined as exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in that interest. For exchanges on or after June 9, 2003, § 1.755–1(b)(5) also applies to basis adjustments that result from exchanges in which the transferee's basis in the partnership interest is determined by reference to other property held at any time by the transferee.

Generally, § 1.755–1(b)(5)(ii) provides that if there is an increase in basis to be allocated to partnership assets, the increase must be allocated to capital

gain property or ordinary income property, respectively, only if the total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all such property would result in a net gain or net income, as the case may be, to the transferee. Similarly, if there is a decrease in basis to be allocated to partnership assets, § 1.755–1(b)(5)(ii) generally provides that the decrease must be allocated to capital gain property or ordinary income property, respectively, only if the total amount of gain or loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all such property would result in a net loss to the transferee. Thus, whether or not a basis adjustment resulting from a substituted basis transaction can be allocated to partnership property depends on whether the transferee partner would be allocated a net gain or net income, in the case of a positive basis adjustment, or net loss, in the case of a negative basis adjustment.

Section 1.755–1(b)(5)(iii) provides rules for allocating increases or decreases in basis within the classes of property. Of note, in the case of a decrease, § 1.755–1(b)(5)(iii)(B) states that the decrease must be allocated first to properties with unrealized depreciation in proportion to the transferee's shares of the respective amounts of unrealized depreciation before the decrease (but only to the extent of the transferee's share of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to the transferee's shares of their adjusted bases (as adjusted under the preceding sentence) (subject to a limitation in decrease of basis in § 1.755–1(b)(5)(iii)(C) and a carryover rule in § 1.755–1(b)(5)(iii)(D)).

In addition, § 1.743–1(f) provides that, when there has been more than one transfer of a partnership interest, a partnership determines a transferee's basis adjustment without regard to any prior transferee's basis adjustment. Accordingly, if a partner acquires its partnership interest in a transaction other than a substituted basis transaction and then subsequently transfers its interest in a substituted basis transaction, the transferee's basis adjustment may shift among partnership assets.

*4. Miscellaneous Provisions*

a. Section 704(c) Allocations

Property contributed to a partnership by a partner is section 704(c) property if, at the time of contribution, the property has a built-in gain or built-in loss (''forward section 704(c) gain or loss''). Section 704(c)(1)(A) requires a partnership to allocate income, gain, loss, and deduction so as to take into account the built-in gain or built-in loss. For this purpose, § 1.704–3(a)(3)(ii) provides that a built-in gain or built-in loss is generally the difference between the property's book value and the contributing partner's adjusted tax basis upon contribution (reduced by decreases in the difference between the property's book value and adjusted tax basis). Section 1.704–3(a)(6)(i) provides that the principles of section 704(c) also apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues property pursuant to § 1.704–1(b)(2)(iv)(*f*) (''reverse section 704(c) allocations''). Partnerships are not required to use the same allocation method for forward and reverse section 704(c) allocations, but the allocation method (or combination of methods) must be reasonable. *See* §§ 1.704–3(a)(6)(i) and 1.704–3(a)(10)(i). Section 1.704–3(a)(10)(i) provides that an allocation method is not reasonable if the contribution or revaluation event and the corresponding allocation are made with a view to shifting the tax consequences of built-in gain or built-in loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

On August 12, 2009, the Treasury Department and the IRS published Notice 2009–70, 2009–2 CB 255, which requested comments on the proper application of the rules relating to the creation and maintenance of forward and multiple reverse section 704(c) allocations (referred to as ''section 704(c) layers'' in this preamble). Specifically, Notice 2009–70 requested comments on, among other things, whether taxpayers should net reverse section 704(c) allocations against existing section 704(c) layers or maintain separate section 704(c) layers if the section 704(c) layers offset one another; how partnerships should allocate tax depreciation, depletion, amortization, and gain or loss between multiple section 704(c) layers (including any offsetting section 704(c) layers); and whether there are other issues relating to section 704(c) layers. Public comments on Notice 2009–70 are discussed in Part 4.a of the Explanation of Provisions section of this preamble. *See* § 601.601(d)(2)(ii)(b).

b. Extension of Time Period for Taxing Precontribution Gain

The Taxpayer Relief Act of 1997 (Pub. Law 105–34, 111 Stat. 788) extended the time period in sections 704(c)(1)(B) and 737(b)(1) for taxing precontribution gain for property contributed to a partnership after June 8, 1997, from five years to seven years (the rule does not, however, apply to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property). The regulations under sections 704, 737, and 1502 have not been revised to reflect this statutory change.

**Explanation of Provisions**

*1. Contributions of Built-in Loss Property*

a. Overview

Section 704(c)(1)(C)(i) provides that if property contributed to a partnership has a built-in loss (''section 704(c)(1)(C) property''), such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner (''section 704(c)(1)(C) partner''). Section 704(c)(1)(C)(ii) further provides that, except as provided by regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership is equal to its fair market value at the time of the contribution. For purposes of section 704(c)(1)(C), the term *built-in loss* means the excess of the adjusted basis of the section 704(c)(1)(C) property (determined without regard to section 704(c)(1)(C)(ii)) over its fair market value at the time of contribution.

The Treasury Department and the IRS believe additional guidance is needed with respect to the application of section 704(c)(1)(C). Accordingly, the proposed regulations provide rules regarding: (1) the scope of section 704(c)(1)(C); (2) the effect of the built-in loss; (3) distributions by partnerships holding section 704(c)(1)(C) property; (4) transfers of a section 704(c)(1)(C) partner's partnership interest; (5) transfers of section 704(c)(1)(C) property; and (6) reporting requirements.

b. Scope of Section 704(c)(1)(C)

The proposed regulations define section 704(c)(1)(C) property as section

704(c) property with a built-in loss at the time of contribution. Thus, in addition to the rules in the proposed regulations, section 704(c)(1)(C) property is subject to the existing rules and regulations applicable to section 704(c) property generally (see, for example, § 1.704–3(a)(9), which provides special rules for tiered partnerships), except as provided in the proposed regulations.

The Treasury Department and the IRS considered whether the principles of section 704(c)(1)(C) should apply to reverse section 704(c) allocations (within the meaning of § 1.704–3(a)(6)(i)). The Treasury Department and the IRS concluded that applying the proposed regulations to reverse section 704(c) allocations would be difficult for taxpayers to comply with and for the IRS to administer. Therefore, the proposed regulations do not apply to reverse section 704(c) allocations.

The Treasury Department and the IRS also considered whether section 704(c)(1)(C) should apply to § 1.752–7 liabilities. Under § 1.752–7(b)(3)(i), a § 1.752–7 liability is an obligation described in § 1.752–1(a)(4)(ii) (generally any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of Code) to the extent that the obligation either is not described in § 1.752–1(a)(4)(i) or the amount of the obligation exceeds the amount taken into account under § 1.752–1(a)(4)(i). The preamble to the final regulations under § 1.752–7, published on May 26, 2005, acknowledges that the rules in section 704(c)(1)(C) and the rules under § 1.752–7 are similar. *See* TD 9207, 70 FR 30334. The preamble explains that it is possible to view the contribution of property with an adjusted tax basis equal to the fair market value of the property, determined without regard to any § 1.752–7 liabilities, as built-in loss property after the § 1.752–7 liability is taken into account (when the § 1.752–7 liability is related to the contributed property). However, the preamble further provides that § 1.752–7 shall be applied without regard to the amendments made by the AJCA, unless future guidance provides to the contrary. The Treasury Department and the IRS believe the rules regarding § 1.752–7 liabilities adequately address the issues posed by § 1.752–7 liabilities and, thus, the proposed regulations provide that section 704(c)(1)(C) property does not include a § 1.752–7 liability.

c. Effect of Section 704(c)(1)(C) Basis Adjustment

The legislative history indicates that Congress intended the built-in loss attributable to section 704(c)(1)(C) property to be for the benefit of the contributing partner only. Conceptually, the built-in loss is similar to a section 743(b) adjustment, which is an adjustment to the basis of partnership property solely with respect to the transferee partner. The current regulations under section 743 provide detailed rules regarding accounting for, maintenance of, recovery of, and transfers of assets with, section 743(b) adjustments. The Treasury Department and the IRS believe it is appropriate that the proposed regulations provide rules similar to those applicable to positive basis adjustments under section 743(b). The Treasury Department and the IRS believe that this approach simplifies the application and administration of section 704(c)(1)(C) and provides a framework of rules familiar to partners, partnerships, and the IRS. Even though the proposed regulations generally adopt the approach taken with respect to section 743(b) adjustments, the Treasury Department and the IRS believe that some of the rules governing section 743(b) adjustments should not apply with respect to a built-in loss and that additional rules are necessary for section 704(c)(1)(C). Thus, the proposed regulations import and specifically apply certain concepts contained in the section 743 regulations to section 704(c)(1)(C), as opposed to simply providing that principles similar to those contained in the regulations under section 743 apply to section 704(c)(1)(C) by cross-reference. The following discussion describes both the substantive rules applied under section 704(c)(1)(C) and, where applicable, how those rules differ from their counterparts under section 743(b).

The proposed regulations create the concept of a section 704(c)(1)(C) basis adjustment. The section 704(c)(1)(C) basis adjustment is initially equal to the built-in loss associated with the section 704(c)(1)(C) property at the contribution and then is adjusted in accordance with the proposed regulations. For example, if A contributes, in a section 721 transaction, property with a fair market value of $6,000 and an adjusted basis of $11,000 to a partnership, the partnership's basis in the property is $6,000, A's basis in its partnership interest is $11,000, and A has a section 704(c)(1)(C) basis adjustment of $5,000. Similar to basis adjustments under section 743(b), a section 704(c)(1)(C) basis adjustment is unique to the section 704(c)(1)(C) partner and does not affect the basis of partnership property or the partnership's computation of any item under section 703. The rules regarding the effect of the section 704(c)(1)(C) basis adjustment are similar to the rules for section 743(b) adjustments in §§ 1.743–1(j)(1) through (j)(3), including: (1) the effect of the section 704(c)(1)(C) basis adjustment on the basis of partnership property; (2) the computation and allocation of the partnership's items of income, deduction, gain, or loss; (3) adjustments to the partners' capital accounts; (4) adjustments to the section 704(c)(1)(C) partner's distributive share; and (5) the determination of a section 704(c)(1)(C) partner's income, gain, or loss from the sale or exchange of section 704(c)(1)(C) property. The Treasury Department and the IRS believe the rule regarding recovery of the section 704(c)(1)(C) basis adjustment should be consistent with the rule regarding recovery of the adjusted tax basis in the property that is not subject to section 704(c)(1)(C). Thus, for property eligible for cost recovery, the proposed regulations provide that, regarding the effect of the basis adjustment in determining items of deduction, if section 704(c)(1)(C) property is subject to amortization under section 197, depreciation under section 168, or other cost recovery in the hands of the section 704(c)(1)(C) partner, the section 704(c)(1)(C) basis adjustment associated with the property is recovered in accordance with section 197(f)(2), section 168(i)(7), or other applicable Code sections. Similar to section 743, the proposed regulations further provide that the amount of any section 704(c)(1)(C) basis adjustment that is recovered by the section 704(c)(1)(C) partner in any year is added to the section 704(c)(1)(C) partner's distributive share of the partnership's depreciation or amortization deductions for the year. The section 704(c)(1)(C) basis adjustment is adjusted under section 1016(a)(2) to reflect the recovery of the section 704(c)(1)(C) basis adjustment.

d. Distribution by Partnership Holding Section 704(c)(1)(C) Property

The proposed regulations provide guidance on current distributions of section 704(c)(1)(C) property to the section 704(c)(1)(C) partner; distributions of section 704(c)(1)(C) property to another partner; and liquidating distributions to a section 704(c)(1)(C) partner. The Treasury Department and the IRS believe it is appropriate to apply principles similar to section 743 to simplify the administration of section 704(c)(1)(C)

for partners, partnerships, and the IRS. Thus, the proposed regulations generally provide rules similar to those for section 743(b) adjustments.

i. Current Distribution of Section 704(c)(1)(C) Property to Section 704(c)(1)(C) Partner

Under the proposed regulations, the adjusted partnership basis of section 704(c)(1)(C) property distributed to the section 704(c)(1)(C) partner includes the section 704(c)(1)(C) basis adjustment for purposes of determining the amount of any adjustment under section 734. However, the proposed regulations provide that section 704(c)(1)(C) basis adjustments are not taken into account in making allocations under § 1.755–1(c).

ii. Distribution of Section 704(c)(1)(C) Property to Another Partner

Under the proposed regulations, if a partner receives a distribution of property in which another partner has a section 704(c)(1)(C) basis adjustment, the distributee partner does not take the section 704(c)(1)(C) basis adjustment into account under section 732. However, the Treasury Department and the IRS request comments on whether a section 704(c)(1)(C) adjustment to distributed stock should be taken into account for purposes of section 732(f) notwithstanding the general rule that section 704(c)(1)(C) adjustments are not taken into account under section 732.

Upon the distribution of section 704(c)(1)(C) property to another partner, the section 704(c)(1)(C) partner reallocates its section 704(c)(1)(C) basis adjustment relating to the distributed property among the remaining items of partnership property under § 1.755–1(c), which is similar to the rule in § 1.743–1(g)(2)(ii) for reallocating section 743(b) adjustments. This rule allocates the basis adjustment to partnership property without regard to the section 704(c)(1)(C) partner's allocable share of income, gain, or loss in each partnership asset. The Treasury Department and the IRS request comments on whether the reallocations of section 704(c)(1)(C) basis adjustments and section 743(b) basis adjustments should instead be made under the principles of § 1.755–1(b)(5)(iii) to take into account the partner's allocable share of income, gain, or loss from each partnership asset.

The proposed regulations further provide that if section 704(c)(1)(B) applies to treat the section 704(c)(1)(C) partner as recognizing loss on the sale of the distributed property, the section 704(c)(1)(C) basis adjustment is taken into account in determining the amount of loss. Accordingly, when the section 704(c)(1)(C) property is distributed to a partner other than the contributing partner within seven years of its contribution to the partnership, the loss will be taken into account by the contributing partner. The Treasury Department and the IRS considered extending the seven-year period so that the loss will be taken into account by the contributing partner on any distribution of section 704(c)(1)(C) property to a partner other than the contributing partner. The Treasury Department and the IRS do not adopt this approach in the proposed regulations because it would be inconsistent with section 704(c)(1)(B) generally and would be more difficult to administer.

iii. Distribution in Complete Liquidation of a Section 704(c)(1)(C) Partner's Interest

The proposed regulations provide that if a section 704(c)(1)(C) partner receives a distribution of property (whether or not the property is section 704(c)(1)(C) property) in liquidation of its interest in the partnership, the adjusted basis to the partnership of the distributed property immediately before the distribution includes the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment for the property in which the section 704(c)(1)(C) partner relinquished an interest (if any) by reason of the liquidation. For purposes of determining the redeemed section 704(c)(1)(C) partner's basis in distributed property under section 732, the partnership reallocates any section 704(c)(1)(C) basis adjustment from section 704(c)(1)(C) property retained by the partnership to distributed properties of like character under the principles of § 1.755–1(c)(i), after applying sections 704(c)(1)(B) and 737. If section 704(c)(1)(C) property is retained by the partnership, and no property of like character is distributed, then that property's section 704(c)(1)(C) basis adjustment is not reallocated to the distributed property for purposes of applying section 732.

If any section 704(c)(1)(C) basis adjustment is not reallocated to the distributed property in connection with the distribution, then that remaining section 704(c)(1)(C) basis adjustment shall be treated as a positive section 734(b) adjustment. If the distribution also gives rise to a negative section 734(b) adjustment, then the negative section 734(b) adjustment and the section 704(c)(1)(C) basis adjustment reallocation are netted together, and the net amount is allocated under § 1.755–1(c). If the partnership does not have a section 754 election in effect at the time of the liquidating distribution, the partnership shall be treated as having made a section 754 election solely for purposes of computing any negative section 734(b) adjustment that would arise from the distribution.

e. Transfer of Section 704(c)(1)(C) Partner's Partnership Interest

i. In General

Under section 722, a section 704(c)(1)(C) partner's basis in its partnership interest fully reflects the built-in loss portion of the basis of the contributed property and the built-in loss generally is taken into account by the section 704(c)(1)(C) partner upon disposition of the partnership interest. Therefore, in accordance with section 704(c)(1)(C)'s overall policy objective of preventing the inappropriate transfer of built-in losses through partnerships, the proposed regulations provide that the transferee of a section 704(c)(1)(C) partner's partnership interest generally does not succeed to the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment. Instead, the share of the section 704(c)(1)(C) basis adjustment attributable to the interest transferred is eliminated. For example, if a section 704(c)(1)(C) partner sells 20 percent of its interest in a partnership, the partner recognizes its outside loss with respect to that 20 percent but 20 percent of the partner's section 704(c)(1)(C) basis adjustment for each section 704(c)(1)(C) property contributed by the partner is eliminated. The transferor remains a section 704(c)(1)(C) partner with respect to any remaining section 704(c)(1)(C) basis adjustments. The proposed regulations provide exceptions to this general rule for nonrecognition transactions, which are discussed in Part 1.e.ii of the Explanation of Provisions section of this preamble.

ii. Nonrecognition Transactions

Under the proposed regulations, the general rule that a section 704(c)(1)(C) basis adjustment is not transferred with the related partnership interest does not apply to the extent a section 704(c)(1)(C) partner transfers its partnership interest in a nonrecognition transaction, with certain exceptions. The legislative history notes that Congress intended to treat a corporation succeeding to the attributes of a contributing corporate partner under section 381 in the same manner as the contributing partner. *See* Conference Report, at 623 n. 546. The Treasury Department and the IRS considered whether similar successor rules should apply in other

nonrecognition transactions. Some of the considerations included: (1) providing consistent results regardless of the order in which a transaction occurs; (2) ensuring that built-in losses are not duplicated; (3) preventing the shifting of basis to other assets; (4) recognizing that other provisions in subchapter K (for example, section 743(b)) already apply to prevent many of the potential abuses; and (5) providing administrable rules for partners, partnerships, and the IRS. The Treasury Department and the IRS concluded that these considerations and the policy rationale underlying the successor rule for section 381 transactions in the legislative history weigh in favor of applying similar successor rules to other nonrecognition transactions, including section 721 transactions, section 351 transactions, and distributions governed by section 731. Thus, when the partnership interest is transferred in one of these nonrecognition transactions, the transferee generally succeeds to the transferor's section 704(c)(1)(C) basis adjustments attributable to the interest transferred and is treated as the section 704(c)(1)(C) partner with respect to such interest. If the nonrecognition transaction is described in section 168(i)(7)(B), then the rules in section 168(i)(7)(A) apply with respect to the transferor's cost recovery deductions under section 168 with respect to the section 704(c)(1)(C) basis adjustment. The proposed regulations further provide that if gain or loss is recognized in the transaction, appropriate adjustments must be made to the section 704(c)(1)(C) basis adjustment.

The Treasury Department and the IRS believe that a section 743(b) adjustment generally will prevent inappropriate duplication of loss when a partnership has a section 754 election in effect or a substantial built-in loss with respect to the transfer. (*See* Part 2.a.i. of the Explanation of Provisions section of this preamble for rules regarding substantial built-in loss transactions). To the extent that the transferee partner's basis in the transferred partnership interest does not reflect a built-in loss, a section 743(b) adjustment should require the partnership to reduce the basis of its properties to reflect the elimination of the built-in loss. The Treasury Department and the IRS believe that the amount of the section 704(c)(1)(C) adjustment and any negative 743(b) adjustment should be netted for this purpose. The Treasury Department and the IRS believe that similar treatment is appropriate when a partnership does not have a section 754 election in effect at the time of transfer to prevent duplication of the built-in loss. Therefore, regardless of whether a section 754 election is in effect or a substantial built-in loss exists with respect to a transfer, the proposed regulations provide that the transferee partner succeeds to the transferor's section 704(c)(1)(C) basis adjustment, as reduced by the amount of any negative section 743(b) adjustment that would be allocated to the section 704(c)(1)(C) property if the partnership had a section 754 election in effect at the time of the transfer.

The proposed regulations also provide that the general rule regarding nonrecognition transactions does not apply to the transfer of all or a portion of a section 704(c)(1)(C) partner's partnership interest by gift because the gift recipient does not fit within Congress's notion of a successor as described in the legislative history. *See* Conference Report, at 623 n. 546. Thus, the general transfer rule applies instead, and the section 704(c)(1)(C) basis adjustment is eliminated.

f. Transfers of Section 704(c)(1)(C) Property

The proposed regulations also provide guidance on the treatment of the section 704(c)(1)(C) partner and the section 704(c)(1)(C) basis adjustment when the partnership transfers section 704(c)(1)(C) property. Consistent with the rules under section 743, a section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment is generally taken into account in determining the section 704(c)(1)(C) partner's income, gain, loss, or deduction from the sale or exchange of section 704(c)(1)(C) property.

With certain exceptions, if section 704(c)(1)(C) property is transferred in a nonrecognition transaction, the proposed regulations provide that the section 704(c)(1)(C) partner retains the section 704(c)(1)(C) basis adjustment in the replacement property (in the case of a section 1031 transaction), in stock (in the case of a section 351 transaction), in a lower-tier partnership interest (in the case of a section 721 transaction), or in the same property held by a new partnership (in the case of a section 708(b)(1)(B) technical termination). The proposed regulations also provide additional rules for section 721 and section 351 transactions, which are described in the following sections.

i. Contribution of Section 704(c)(1)(C) Property Under Section 721

The proposed regulations provide rules for when, after a section 704(c)(1)(C) partner contributes section 704(c)(1)(C) property to an upper-tier partnership, the upper-tier partnership contributes the property to a lower-tier partnership in a transaction described in section 721(a). The proposed regulations ensure that the section 704(c)(1)(C) adjustment amount is ultimately tracked back to the initial contributing partner, similar to the rules for section 721 contributions of property in which a partner has a section 743(b) adjustment.

In particular, the proposed regulations provide that the interest in the lower-tier partnership received by the upper-tier partnership is treated as the section 704(c)(1)(C) property with the same section 704(c)(1)(C) basis adjustment as the contributed property. The lower-tier partnership determines its basis in the contributed property by excluding the existing section 704(c)(1)(C) basis adjustment. However, the lower-tier partnership also succeeds to the upper-tier partnership's section 704(c)(1)(C) basis adjustment. The portion of the upper-tier partnership's basis in its interest in the lower-tier partnership attributable to the section 704(c)(1)(C) basis adjustment must be segregated and allocated solely to the section 704(c)(1)(C) partner for whom the initial section 704(c)(1)(C) basis adjustment was made. Similarly, the section 704(c)(1)(C) basis adjustment to which the lower-tier partnership succeeds must be segregated and allocated solely to the upper-tier partnership, and the section 704(c)(1)(C) partner for whom the initial section 704(c)(1)(C) basis adjustment was made. If gain or loss is recognized on the transaction, appropriate adjustments must be made to the section 704(c)(1)(C) basis adjustment.

The proposed regulations provide that to the extent that any section 704(c)(1)(C) basis adjustment in a tiered partnership is recovered (for example, by sale or depreciation of the property), or is otherwise reduced, upper or lower partnerships in the tiered structure must make conforming reductions to related section 704(c)(1)(C) basis adjustments to prevent duplication of loss.

The proposed regulations recognize that the contribution from the upper-tier partnership to the lower-tier partnership will give rise to an additional section 704(c)(1)(C) basis adjustment if the value of the property has fallen below its common basis to the upper-tier partnership; this additional section 704(c)(1)(C) adjustment will be allocated among the partners of the upper-tier partnership in a manner that reflects their relative shares of that loss.

ii. Transfer of Section 704(c)(1)(C) Property in a Section 351 Transaction

The transfer of the section 704(c)(1)(C) property by a partnership to a corporation in a section 351 transaction severs the contributing partner's connection with the section 704(c)(1)(C) property at the partnership level. The section 704(c)(1)(C) partner, now an indirect shareholder of the corporation, no longer has a section 704(c)(1)(C) basis adjustment with respect to the property. The proposed regulations provide that if, in an exchange described in section 351, a partnership transfers section 704(c)(1)(C) property to a corporation, the stock the partnership receives in the exchange is treated, solely with respect to the section 704(c)(1)(C) partner, as section 704(c)(1)(C) property that generally has the same section 704(c)(1)(C) basis adjustment as the section 704(c)(1)(C) property transferred to the corporation (reduced by any portion of the section 704(c)(1)(C) basis adjustment that reduced the partner's share of any gain on the transaction). The transferee corporation's adjusted basis in the transferred property is determined under section 362 (including by applying section 362(e)), taking into account any section 704(c)(1)(C) basis adjustments in the transferred property. However, the proposed regulations provide that, if a partnership recognizes gain on the transfer, the partnership's gain is determined without regard to any section 704(c)(1)(C) basis adjustment, but the section 704(c)(1)(C) partner's gain does take into account the section 704(c)(1)(C) basis adjustment. *See* § 1.362–4(e)(1) for additional rules regarding the application of section 362(e) to transfers by partnerships.

iii. Partnership Technical Terminations

The proposed regulations provide that a partner with a section 704(c)(1)(C) basis adjustment in section 704(c)(1)(C) property held by a partnership that terminates under section 708(b)(1)(B) will continue to have the same section 704(c)(1)(C) basis adjustment with respect to section 704(c)(1)(C) property deemed contributed by the terminated partnership to the new partnership under § 1.708–1(b)(4). In addition, the deemed contribution of property by a terminated partnership to a new partnership is not subject to the proposed regulations and does not create a section 704(c)(1)(C) basis adjustment.

iv. Miscellaneous Provisions

The proposed regulations also provide additional rules for like-kind exchanges of section 704(c)(1)(C) property, dispositions of section 704(c)(1)(C) property in installment sales, and contributed contracts.

g. Reporting Requirements Under Section 704(c)(1)(C)

The proposed regulations prescribe certain reporting requirements for section 704(c)(1)(C) basis adjustments that are similar to the requirements for section 743(b) adjustments. Specifically, the proposed regulations provide that a partnership that owns property for which there is a section 704(c)(1)(C) basis adjustment must attach a statement to the partnership return for the year of the contribution of the section 704(c)(1)(C) property setting forth the name and taxpayer identification number of the section 704(c)(1)(C) partner as well as the section 704(c)(1)(C) basis adjustment and the section 704(c)(1)(C) property to which the adjustment relates.

*2. Mandatory Basis Adjustment Provisions*

a. Section 743 Substantial Built-In Loss Provisions

i. General Provisions

The proposed regulations generally restate the statutory language in section 743(a) and (b) regarding substantial built-in losses, but provide additional guidance in several areas. The proposed regulations clarify that, if a partnership has a substantial built-in loss immediately after the transfer of a partnership interest, the partnership is treated as having a section 754 election in effect for the taxable year in which the transfer occurs, but only with respect to that transfer (unless another transaction is also subject to the mandatory basis adjustment provisions of sections 734 or 743).

The proposed regulations also provide that in determining whether there is a substantial built-in loss, section 743(b) adjustments and section 704(c)(1)(C) basis adjustments (except the transferee's section 743(b) adjustments and section 704(c)(1)(C) basis adjustments, if any) are disregarded.

The proposed regulations also provide special rules for determining fair market value in the case of a tiered partnership. The Treasury Department and the IRS are aware that there is some uncertainty as to how to determine the fair market value of a lower-tier partnership interest for purposes of determining whether the partnership has a substantial built-in loss in its assets when the upper-tier partnership is allocated a share of the lower-tier partnership's liabilities under section 752. The Treasury Department and the IRS believe it is appropriate for this purpose to gross up the fair market value of the lower-tier partnership interest by the upper-tier partnership's allocated share of liabilities; otherwise, the regulations could inappropriately treat a lower-tier partnership interest as a loss asset. Thus, under the proposed regulations, the fair market value of a lower-tier partnership interest (solely for purposes of computing the upper-tier partnership's basis adjustment under section 743(b)) is equal to the sum of: (i) the amount of cash that the upper-tier partnership would receive if the lower-tier partnership sold all of its property for cash to an unrelated person for an amount equal to the fair market value of such property, satisfied all of its liabilities, and liquidated; and (ii) the upper-tier partnership's share of the lower-tier partnership's liabilities (as determined under section 752 and the regulations).

In addition, the proposed regulations provide special rules for basis adjustments with respect to tiered partnerships. Under the authority granted by section 743(d)(2), the proposed regulations provide that if a partner transfers an interest in an upper-tier partnership that holds a direct or indirect interest in a lower-tier partnership, and the upper-tier partnership has a substantial built-in loss with respect to the transfer, each lower-tier partnership is treated, solely with respect to the transfer, as if it had made a section 754 election for the taxable year of the transfer. The Treasury Department and the IRS are aware of the practical and administrative difficulties associated with requiring a lower-tier partnership that has not elected under section 754 to adjust the basis of its assets in connection with the transfer of an interest in an upper-tier partnership. Comments are requested on the scope of this rule and on measures to ease administrative burdens while still accomplishing the objective of the statute.

These proposed regulations also provide guidance on the application of section 743(b) adjustments in tiered partnership situations generally. Consistent with Rev. Rul. 87–115, 1987–2 CB 163, the proposed regulations provide that if an interest in an upper-tier partnership that holds an interest in a lower-tier partnership is transferred by sale or exchange or upon the death of a partner, and the upper-tier partnership and the lower-tier partnership both have elections in effect under section 754, then an interest in the lower-tier partnership will be deemed to have been transferred by sale or exchange or

upon the death of a partner, as the case may be. The amount of the interest in the lower-tier partnership deemed to have been transferred is the portion of the upper-tier partnership's interest in the lower-tier partnership that is attributable to the interest in the upper-tier partnership being transferred. Accordingly, to the extent the adjusted basis of the upper-tier partnership's interest in a lower-tier partnership is adjusted, the lower-tier partnership must adjust the basis of its properties.

Section 743(e)(7) provides that the Secretary may prescribe regulations for applying the EIP rules to tiered partnerships, and the legislative history makes clear that Congress did not intend for EIPs to avoid the mandatory basis adjustment provisions through the use of tiered partnerships. *See* Conference Report, at 627. The Treasury Department and the IRS believe that the same concerns exist for tiered EIPs as exist for all other partnerships subject to the mandatory basis adjustment provisions. Accordingly, the proposed regulations do not include specific rules for tiered EIPs beyond the rules governing all tiered partnerships.

The proposed regulations provide anti-abuse rules. The purpose of the amendments to section 743 is to prevent a partner that purchases an interest in a partnership with an existing built-in loss and no election under section 754 in effect from being allocated a share of the loss when the partnership disposes of the property or takes cost recovery deductions with respect to the property. Accordingly, consistent with the purpose of the amendments and the specific grant of regulatory authority in section 743(d)(2), the proposed regulations provide that the provisions of section 743 and the regulations thereunder regarding substantial built-in loss transactions must be applied in a manner consistent with the purpose of such provisions and the substance of the transaction. Thus, if a principal purpose of a transaction is to avoid the application of the substantial built-in loss rules with respect to a transfer, the Commissioner can recast the transaction for Federal income tax purposes as appropriate to achieve tax results that are consistent with the purpose of the provisions. Whether a tax result is inconsistent with the purpose of the substantial built-in loss provisions is determined based on all the facts and circumstances. For example, under the proposed regulations, property held by related partnerships may be aggregated and a contribution of property to a partnership may be disregarded in applying the substantial built-in loss provisions in section 743 and the regulations thereunder if the property was transferred with a principal purpose of avoiding the application of such provisions.

Finally, the proposed regulations clarify that a partnership that has a substantial built-in loss immediately following the transfer of a partnership interest must comply with certain provisions of § 1.743–1(k). In this case, the partnership must attach a statement of adjustments to its partnership return as if an election under section 754 were in effect at the time of the transfer solely with respect to the transfer for which there is a substantial built-in loss.

One commenter on the Notice requested that the Treasury Department and the IRS provide a de minimis exception for the substantial built-in loss provisions for transfers of small interests (subject to an annual limit on aggregate transfers during a taxable year). The substantial built-in loss provisions are intended to prevent the inappropriate shifting of losses among partners, and neither the legislative history nor the statute suggests that Congress intended to limit the scope of the rule to the transfer of large interests. Accordingly, the Treasury Department and the IRS decline to provide an exception to the substantial built-in loss rules based on the size of the interest transferred. The Treasury Department and the IRS will continue to study, and request comments on, whether a rule is warranted that excludes de minimis basis adjustments from the mandatory adjustment provisions.

ii. EIPs

The proposed regulations generally adopt the statutory language in section 743(e) and the provisions in the Notice. The Notice requested comments on certain aspects of the interim procedures for EIPs, and the Treasury Department and the IRS received comments in response to that request, which are described in this section.

The Notice detailed reporting requirements for transferors of EIP interests so that transferees could comply with the loss limitation rule in section 743(e)(2). The proposed regulations clarify that the reporting requirements with respect to transferors of an interest in an EIP described in the Notice do not apply if the transferor recognizes gain on the transfer and no prior transferor recognized a loss on any transfer. The Treasury Department and the IRS do not believe reporting is necessary in this limited circumstance because the transferee should not be subject to the loss limitation rule of section 743(e)(2).

In regard to the requirement in section 743(e)(6)(I) that the partnership agreement provide for a term that is not in excess of 15 years, one commenter requested that regulations provide that a partnership may still qualify as an EIP even if the partnership's initial term is greater than 15 years, particularly in cases in which the amount of the partnership's equity investment in the remaining assets is small (for example, 25 percent of the total committed capital). However, Congress considered the circumstances in which it would be appropriate to provide an extension of the term and specifically provided an exception to the 15-year requirement for EIPs in existence on June 4, 2004. Accordingly, the Treasury Department and the IRS decline to adopt this comment in the proposed regulations.

The Notice also provides guidance on whether a partnership has ever been engaged in a trade or business for purposes of section 743(e)(6)(C). The Notice provides that until further guidance is issued, an upper-tier partnership will not be treated as engaged in the trade or business of a lower-tier partnership if, at all times during the period in which the upper-tier partnership owns an interest in the lower-tier partnership, the adjusted basis of its interest in the lower-tier partnership is less than 25 percent of the total capital that is required to be contributed to the upper-tier partnership by its partners during the entire term of the upper-tier partnership (the ''25% Rule''). The Notice specifically requests comments on rules that would be appropriate for future guidance in determining whether an upper-tier partnership is treated as engaged in a trade or business that is conducted by a lower-tier partnership. One commenter requested that the Treasury Department and the IRS confirm whether the 25% Rule is a safe harbor or whether a violation of the 25% Rule disqualifies a partnership from being an EIP. This commenter also requested that the Treasury Department and the IRS clarify the 25% Rule in the case of borrowing. The commenter noted that lower-tier partnership interests are often acquired with capital contributions and the proceeds of borrowing. Therefore, the commenter requested that any safe harbor take into account leverage. This commenter further suggested that rules similar to the rules in § 1.731–2(e)(3) (providing circumstances in which a partnership would not be treated as engaged in a trade or business for purposes of section 731(c)(3)(C)) should apply for purposes of section 743(e)(6)(C). Finally, the

commenter requested that the Treasury Department and the IRS provide additional safe harbors (for example, where the upper-tier partnership is organized for investment services and the partners and managers of the upper-tier partnership do not engage in the day-to-day operations of the lower-tier partnership's trade or business activity, but partners and/or managers are on the board of directors of the lower-tier partnership).

The Treasury Department and the IRS view the 25% Rule as a bright-line rule. Therefore, a failure to meet the 25% Rule will mean that the partnership fails to qualify as an EIP. The Treasury Department and the IRS agree that the rules in § 1.731–2(e)(3) should apply for purposes of section 743(e)(6)(C). Therefore, the proposed regulations provide a safe harbor by cross-referencing those rules. Under the proposed regulations, if a partnership would not be treated as engaged in a trade or business under § 1.731–2(e)(3) for purposes of section 731(c)(3)(C), the partnership also will not be treated as engaged in a trade or business for purposes of section 743(e)(6)(C). The Treasury Department and the IRS believe the 25% Rule and the cross-reference to § 1.731–2(e)(3) provide appropriate guidance under section 743(e)(6)(C) and therefore the proposed regulations do not provide any additional safe harbors. The Treasury Department and the IRS are continuing to study the extent to which borrowing should be taken into account in applying the 25% Rule and therefore request comments on appropriate rules.

A commenter also requested additional guidance regarding section 743(e)(6)(H), which provides that one of the eligibility requirements for an EIP is that the partnership agreement have substantive restrictions on each partner's ability to cause a redemption of the partner's interest. The proposed regulations follow the examples in the legislative history and provide that substantive restrictions for purposes of section 743(e)(7)(H) include cases in which a redemption is permitted under a partnership agreement only if the redemption is necessary to avoid a violation of state, federal, or local laws (such as ERISA or the Bank Holding Company Act) or the imposition of a federal excise tax on, or a change in the federal tax-exempt status of, a tax-exempt partner. *See* Conference Report at 626. The Treasury Department and the IRS request comments on other restrictions that could be considered substantive restrictions on a partner's ability to cause a redemption of the partner's interest for purposes of section 743(e)(6)(H).

The proposed regulations provide that the EIP election must be made on a timely filed original return, including extensions. One commenter requested relief for certain instances in which the partnership fails to make a valid EIP election. The commenter requested relief when: (1) A partnership makes an EIP election, but did not qualify to make the election; (2) the partnership attempts to make an EIP election, but it is defective; or (3) the partnership makes an EIP election, but fails to continue to qualify. In each case, the commenter believes that the Treasury Department and the IRS should treat the partnership as an EIP if: (a) Its failure to qualify or the defect was inadvertent; (b) the partners and the partnership consistently treated the partnership as an EIP; (c) steps were taken to cure the defect in a reasonable period of time; and (d) the partners and the EIP agree to make any necessary adjustments. The Treasury Department and the IRS do not adopt this comment in the proposed regulations because there are existing procedures for situations in which a regulatory election is defective.

The Treasury Department and the IRS request comments on appropriate rules for situations in which a partnership that has elected to be an EIP fails to qualify in a particular year, but then qualifies again in a future year. The Treasury Department and the IRS also request comments on the circumstances in which a qualifying partnership that has revoked an EIP election should be permitted to reelect and the rules and procedures that should apply to the reelection.

iii. Securitization Partnerships

The proposed regulations generally restate the statutory provisions relating to the exception from the substantial built-in loss provisions for securitization partnerships.

b. Section 734 Substantial Basis Reduction Provisions

i. General Provisions

The proposed regulations generally follow the statutory provisions regarding substantial basis reductions. Questions have been raised whether the $250,000 threshold in section 734(d)(1) applies to a partnership's aggregate distributions for a taxable year. The Treasury Department and the IRS believe that the better interpretation of section 734(a), (b), and (d) is that the threshold applies separately with respect to each distributee because: (1) Both section 734(a) and (b) refer to a distribution of property to ''a partner;'' and (2) section 734(b)(2)(A) and (B), referenced in section 734(d), refer to the ''distributee partner'' or the ''distributee.'' These references indicate that the substantial built-in loss provisions apply to each partner-distributee separately, but with respect to the entire distribution made to the distributee. That is, where multiple properties are distributed to a partner-distributee, the $250,000 threshold is determined by reference to all properties distributed to the partner-distributee as part of the same distribution.

The proposed regulations also provide additional guidance in several areas. The proposed regulations provide that if there is a substantial basis reduction, the partnership is treated as having an election under section 754 in effect for the taxable year in which the distribution occurs, but solely for the distribution to which the substantial basis reduction relates (unless another transaction is subject to the mandatory basis adjustment provisions of sections 734 or 743). For example, if a partnership without a section 754 election in effect has a substantial basis reduction with respect to a distribution, and a partner in the partnership in that same year transfers a partnership interest (and the partnership does not have a substantial built-in loss immediately after the transfer), the partnership will be treated as having a section 754 election in effect for the distribution but not the transfer.

The same issues exist in the context of section 734(b) adjustments and tiered partnerships as exist with respect to section 743(b) adjustments and tiered partnerships. Thus, the proposed regulations also provide guidance for substantial basis reductions in tiered partnership arrangements. Under the proposed regulations, if there is a substantial basis reduction with respect to a distribution by an upper-tier partnership that (either directly or indirectly through one or more partnerships) holds an interest in a lower-tier partnership, each lower-tier partnership is treated, solely with respect to the distribution, as if it had made an election under section 754 for the taxable year in which the distribution occurs.

These proposed regulations also provide guidance on the application of section 734(b) adjustments in tiered partnership situations generally. Consistent with Rev. Rul. 92–15, 1992–1 CB 215, if an upper-tier partnership makes an adjustment under section 734(b) to the basis of an interest it holds in a lower-tier partnership that has an

election under section 754 in effect, the lower-tier partnership must make adjustments to the upper-tier partnership's share of the lower-tier partnership's assets. The amount of the lower-tier partnership's adjustment is equal to the adjustment made by the upper-tier partnership to the basis of its interest in the lower-tier partnership. The lower-tier partnership's adjustment to the upper-tier partnership's share of its assets is for the upper-tier partnership only and does not affect the basis in the lower-tier partnership's property for the other partners of the lower-tier partnership.

The Treasury Department and the IRS are aware of the practical and administrative difficulties associated with the requirement that a lower-tier partnership adjust the basis of its assets with respect to adjustments under both section 734 and section 743 and request comments on the scope of this rule and measures to ease the administrative burden while still accomplishing the objective of the statute.

The proposed regulations also update § 1.734–1(d) to clarify that its reporting requirements apply if there is a substantial basis reduction with respect to a distribution. In this case, the provisions of § 1.734–1(d) apply solely with respect to the distribution to which the substantial basis reduction relates as if an election under section 754 were in effect at the time of the transfer.

ii. Securitization Partnerships

The proposed regulations generally restate the statutory provisions relating to the exception from the substantial basis reduction provisions for securitization partnerships.

*3. Section 755 Basis Allocation Rules*

a. Section 755(c)

The proposed regulations generally restate the statutory provisions of section 755(c) and provide rules applicable to an allocation of a downward adjustment in the basis of partnership property under sections 734(b) and 755(a). As discussed in Part 3 of the Background section of this preamble, Congress enacted section 755(c) in response to the JCT's investigation of Enron Corporation. In addressing transactions among related parties, the JCT Enron Report specifically provides that:

> Partnership allocations between members of the same affiliated group (and, in general, related parties) may not have the same economic consequences as allocations between unrelated partners. As a result, related partners can use the partnership allocation rules inappropriately to shift basis among assets . . . The Joint Committee staff recommends that . . . the partnership basis rules should be altered to preclude an increase in basis to an asset if the offsetting basis reduction would be allocated to stock of a partner (or related party).

JCT Enron Report, at 29–30. The proposed regulations provide that in making an allocation under section 755(a) of any decrease in the adjusted basis of partnership property under section 734(b), no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) or 707(b)(1)) to such corporation) that is a partner in the partnership. Given Congress's intent to prevent taxpayers from shifting tax gain to stock of a corporate partner or corporation related to a corporate partner, the Treasury Department and the IRS believe it is appropriate to interpret section 755(c) to apply broadly to related persons under either section 267(b) or section 707(b)(1). *See* Grassley Report, at 127 and House Committee Report, at 287. If section 755(c) only applied to persons treated as related within the meaning of both section 267(b) and section 707(b)(1), then the provision would apply in very limited circumstances, significantly restricting the scope of section 755(c).

b. Modification of Basis Allocation Rules for Substituted Basis Transactions

The Treasury Department and the IRS are aware that the current basis allocation rules for substituted basis transactions can result in unintended consequences, particularly with regard to the ''net gain'' and ''net loss'' requirement in § 1.755–1(b)(5)(ii). The net gain or net loss requirement in § 1.755–1(b)(5)(ii) may, in certain situations, cause a partnership to be unable to properly adjust the basis of partnership property with respect to a transferee partner. For example, when there is an increase in basis to be allocated to partnership assets and the property of the partnership does not have overall unrealized net gain or net income, the basis increase cannot be allocated under § 1.755–1(b)(5). Conversely, if there is a decrease in basis to be allocated to partnership assets and the property of the partnership does not have overall unrealized net loss, the basis decrease cannot be allocated under § 1.755–1(b)(5). The Treasury Department and the IRS believe this result is inappropriate. Accordingly, the Treasury Department and the IRS propose to amend the current regulations as described in this preamble.

i. Allocations Between Classes of Property

The proposed regulations provide that if there is an increase in basis to be allocated to partnership assets under § 1.755–1(b)(5), the increase must be allocated between capital gain property and ordinary income property in proportion to, and to the extent of, gross gain or gross income (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all property in each class. The proposed regulations further provide that any remaining increase must be allocated between the classes in proportion to the fair market value of all property in each class.

If there is a decrease in basis to be allocated to partnership assets under § 1.755–1(b)(5), the proposed regulations provide that the decrease must be allocated between capital gain property and ordinary income property in proportion to, and to the extent of, the gross loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all property in each class. Any remaining decrease must be allocated between the classes in proportion to the transferee's shares of the adjusted bases of all property in each class (as adjusted under the preceding sentence). Thus, the proposed regulations remove the requirements that (1) there be an overall net gain or net income in partnership property for an increase in basis to be allocated to a particular class of property; and (2) there be an overall net loss in partnership property for a decrease in basis to be allocated to a particular class of property.

ii. Allocations Within Classes of Property

The Treasury Department and the IRS are aware that there is uncertainty regarding whether the transferee's shares of unrealized appreciation and depreciation described in § 1.755–1(b)(5)(iii)(A) and (B) include only amounts attributable to the acquired partnership interest. The proposed regulations clarify that the transferee's shares of the items are limited to the amounts attributable to the acquired partnership interest.

In addition, § 1.755–1(b)(5)(iii)(C) has a limitation that provides that a transferee's negative basis adjustment is limited to the transferee's share of the partnership's adjusted basis in all

depreciated assets in that class. By focusing on the transferee's share of adjusted basis with respect to only depreciated assets in the class, as opposed to all assets in the class, this rule subjects more of the negative basis adjustment to the carryover rules in § 1.755–1(b)(5)(iii)(D). The Treasury Department and the IRS believe this result is inappropriate. Accordingly, the proposed regulations provide that if a decrease in basis must be allocated to partnership property and the amount of the decrease otherwise allocable to a particular class exceeds the transferee's share of the adjusted basis to the partnership of all assets in that class, the basis of the property is reduced to zero (but not below zero). Therefore, under the proposed regulations, the negative basis adjustment is no longer limited to the transferee's share of the partnership's adjusted basis in all depreciated assets in a class.

c. Succeeding to Transferor's Basis Adjustment

The proposed regulations amend the regulations under section 743 to provide an exception to the rule that a transferee's basis adjustment is determined without regard to any prior transferee's basis adjustment. The Treasury Department and the IRS believe that this rule can lead to inappropriate results when the transferor transfers its partnership interest in a substituted basis transaction (within the meaning of § 1.755–1(b)(5)) and the transferor had a basis adjustment under section 743(b) attributable to the transferred interest that was allocated pursuant to § 1.755–1(b)(2) through (b)(4). Under the current regulations, the transferee does not succeed to the transferor's section 743(b) adjustment but, rather, is entitled to a new section 743(b) adjustment that is allocated under a different set of rules, which may result in the inappropriate shifting of basis among the partnership's assets. The proposed regulations provide that the transferee in a substituted basis transaction succeeds to that portion of the transferor's basis adjustment attributable to the transferred partnership interest and that the adjustment is taken into account in determining the transferee's share of the adjusted basis to the partnership for purposes of §§ 1.743–1(b) and 1.755–1(b)(5).

*4. Miscellaneous Provisions*

a. Special Rules for Forward and Reverse Section 704(c) Allocations

One commenter on Notice 2009–70 noted that the definitions of the terms ''built-in gain'' and ''built-in loss'' in § 1.704–3(a)(3)(ii) imply that section 704(c) layers with ''different signs'' should be netted against each other because the regulations provide that built-in gain or built-in loss is reduced by differences in the property's adjusted tax basis and book value.

In response to this comment, the proposed regulations provide that built-in gain and built-in loss do not take into account any decreases or increases, as the case may be, to the property's book value pursuant to a revaluation of partnership property under § 1.704–1(b)(2)(iv)(*f*). Thus, for example, under the proposed regulations, reverse section 704(c) allocations do not reduce forward section 704(c) gain or loss.

The Treasury Department and the IRS also received several comments regarding the proper treatment of section 704(c) layers, suggesting one of two approaches. Under the layering approach, a partnership would create and maintain multiple section 704(c) layers for the property. Under the netting approach, a partnership would net multiple section 704(c) layers for the property and therefore each section 704(c) property would have one section 704(c) layer. One commenter recommended that the layering approach be the default rule, but that certain partnerships should be permitted to adopt a netting approach depending on the value of the partnership's assets. This commenter believed that the layering approach is more appropriate because the netting approach can result in distortions when partnerships use the traditional method of allocating section 704(c) amounts and the ceiling rule is implicated. The commenter also argued that the layering approach better maintains the economic expectations of the partners and is generally more consistent with the policy underlying section 704(c). However, this commenter also acknowledged that the netting approach is simpler to apply, and that in many cases both approaches will reach the same result. Another commenter suggested that partnerships be given the option of using either the layering approach or the netting approach. According to the commenter, this would allow partnerships to avoid the burden and expense of maintaining section 704(c) layers, particularly when maintaining section 704(c) layers is unnecessary.

The proposed regulations do not permit taxpayers to use a netting approach because a netting approach could lead to distortions. The Treasury Department and the IRS understand, however, that maintaining section 704(c) layers may result in additional administrative burdens and, therefore, request comments on when it is appropriate for partnerships to use a netting approach (for example, small partnerships).

One commenter noted that guidance was necessary with respect to how to allocate tax items among multiple section 704(c) layers. This commenter suggested three methods for allocating tax items: (1) Allocate tax items to the oldest layer first; (2) allocate tax items to the newest section 704(c) layers first; and (3) allocate tax items among the section 704(c) layers pro rata based on the amount of each layer. The commenter suggested that the Treasury Department and the IRS provide a default rule that would allocate to the oldest section 704(c) layers first, but permit partnerships to elect any reasonable method (such as the three methods described).

The Treasury Department and the IRS agree that partnerships should be permitted to use any reasonable method in allocating tax items. The Treasury Department and the IRS decline to adopt a default rule for allocating tax items because no single method is more appropriate than other methods. Therefore, the proposed regulations provide that a partnership may use any reasonable method to allocate items of income, gain, loss, and deduction associated with an item of property among the property's forward and reverse section 704(c) layers subject to the anti-abuse rule in § 1.704–3(a)(10). The partnership's choice of method is also subject to § 1.704–3(a)(2), which provides that a partnership may use different methods with respect to different items of contributed property, provided that the partnership and the partners consistently apply a single reasonable method for each item of contributed property and that the overall method or combination of methods is reasonable based on the facts and circumstances and consistent with the purpose of section 704(c). The Treasury Department and the IRS are considering providing examples of reasonable methods in future guidance and therefore request comments on these and other methods for allocating tax items.

b. Extension of Time Period for Taxing Precontribution Gain

The proposed regulations amend various provisions in §§ 1.704–4, 1.737–1, and 1.1502–13 to reflect the amendments to sections 704(c)(1)(B) and 737(b)(1) that lengthen the period of time for taxing precontribution gain from five years to seven years. The

proposed regulations also clarify how partners determine the seven-year period. Specifically, the proposed regulations provide that the seven-year period begins on, and includes, the date of contribution, and ends on, and includes, the last date that is within seven years of the contribution.

**Proposed Effective Date**

These regulations are generally proposed to apply to partnership contributions and transactions occurring on or after the date final regulations are published in the **Federal Register**. The proposed regulations under § 1.755–1(b)(5) will apply to transfers of partnership interests occurring on or after January 16, 2014. No inference is intended as to the tax consequences of transactions occurring before the effective date of these regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Treasury Department and the IRS believe that the economic impact on small entities as a result of the collection of information in this notice of proposed rulemaking will not be significant. The small entities subject to the collection are business entities formed as partnerships that: (1) Receive a contribution of built-in loss property; (2) are required to make a mandatory basis adjustment under section 734 or section 743; and/or (3) are eligible for, and elect to apply, the electing investment partnership provisions in section 743(e). In the case of the contribution of built-in loss property, the partnership is required to provide a statement in the year of contribution setting forth basic information that the partnership will need in order to properly apply the rules. Similarly, in the case of the mandatory basis adjustment provisions, the partnership will already have the information subject to the collection in order to comply with the rules. In the case of EIPs, the collections are either one-time (election) or annual (annual statement). The collection only applies if the partnership elects to be an EIP. Furthermore, the proposed regulations provide the specific language for the annual statement. Finally, the collection regarding the mandatory basis adjustment provisions and the EIP rules have been in effect since 2005, as required by Notice 2005–32, and the Treasury Department and the IRS have not received comments that the collections have a significant economic impact. For these reasons, the Treasury Department and the IRS do not believe that the collection of information in this notice of proposed rulemaking has a significant economic impact. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 30, 2014 beginning at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. April 16, 2014.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 16, 2014, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 16, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these regulations are Wendy L. Kribell and Benjamin H. Weaver, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.704–3 is amended by:

■ 1. Revising paragraph (a)(3)(ii).
■ 2. Adding paragraph (a)(3)(iii).
■ 3. Revising paragraph (a)(6)(i).
■ 4. Adding paragraph (a)(6)(iii).
■ 5. Adding paragraph (a)(6)(iv).
■ 6. Revising paragraph (a)(7).
■ 7. Revising the first sentence in paragraph (a)(10) by removing the word ''allocation'' before the word ''method''.
■ 8. Redesignating paragraph (f) as paragraph (g).
■ 9. Adding a new paragraph (f).
■ 10. Adding a sentence at the end of newly redesignated paragraph (g).

The revisions and additions read as follows.

**§ 1.704–3 Contributed property.**

(a) * * *

(3) * * *

(ii) *Built-in gain and built-in loss.* The built-in gain on section 704(c) property is the excess of the property's book value over the contributing partner's adjusted tax basis upon contribution. The built-in gain is thereafter reduced by decreases in the difference between the property's book value and adjusted tax basis (other than decreases to the property's book value pursuant to § 1.704–1(b)(2)(iv)(*f*)). The built-in loss on section 704(c) property is the excess of the contributing partner's adjusted tax basis over the property's book value upon contribution. The built-in loss is thereafter reduced by decreases in the difference between the property's adjusted tax basis and book value (other than increases to the property's book

value pursuant to § 1.704–1(b)(2)(iv)(*f*)). For purposes of paragraph (a)(6)(iii) and (iv) of this section, a built-in gain or built-in loss referred to in this paragraph shall be referred to as a forward section 704(c) allocation. *See* § 1.460–4(k)(3)(v)(A) for a rule relating to the amount of built-in income or built-in loss attributable to a contract accounted for under a long-term contract method of accounting.

(iii) *Effective/applicability date.* The provisions of paragraph (a)(3)(ii) of this section apply to partnership contributions and transactions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. * * *

* * * * *

(6) (i) *Revaluations under section 704(b).* The principles of this section apply with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to section 1.704–1(b)(2)(iv)(*f*) (reverse section 704(c) allocations). Each such revaluation creates a separate amount of built-in gain or built-in loss, as the case may be (a section 704(c) layer), that must be tracked separately from built-in gain or built-in loss arising from contribution (a forward section 704(c) layer) and any other revaluation (a reverse section 704(c) layer). For instance, one section 704(c) layer with respect to a particular property may be of built-in gain, and another section 704(c) layer with respect to the same property may be of built-in loss.

* * * * *

(iii) *Allocation method.* A partnership may use any reasonable method to allocate the items of income, gain, loss, and deduction associated with an item of property among the property's forward and reverse section 704(c) layers.

(iv) *Effective/applicability date.* The provisions of paragraph (a)(6)(iii) of this section apply to partnership contributions and transactions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(7) *Transfers of a partnership interest.* If a contributing partner transfers a partnership interest, built-in gain must be allocated to the transferee partner as it would have been allocated to the transferor partner. If the contributing partner transfers a portion of the partnership interest, the share of built-in gain proportionate to the interest transferred must be allocated to the transferee partner. Rules for the allocation of built-in loss are provided in paragraph (f) of this section.

* * * * *

(f) *Special rules for built-in loss property*—(1) *General principles*—(i) *Contributing partner.* If a partner contributes section 704(c)(1)(C) property (as defined in paragraph (f)(2)(i) of this section) to a partnership, the excess of the adjusted basis of the section 704(c)(1)(C) property (determined without regard to paragraph (f)(1)(ii) of this section) over its fair market value immediately before the contribution will be taken into account only in determining the amount of items allocated to the section 704(c)(1)(C) partner (as defined in paragraph (f)(2)(ii) of this section) that contributed such section 704(c)(1)(C) property.

(ii) *Non-contributing partners.* In determining the amount of items allocated to partners other than the section 704(c)(1)(C) partner, the initial basis of section 704(c)(1)(C) property in the hands of the partnership is equal to the property's fair market value at the time of contribution.

(2) *Definitions.* For purposes of this section—

(i) *Section 704(c)(1)(C) property.* The term *section 704(c)(1)(C) property* means section 704(c) property (as defined in paragraph (a)(3)(i) of this section) with a built-in loss at the time of contribution. Section 704(c)(1)(C) property does not include a § 1.752–7 liability (within the meaning of § 1.752–7(b)(3)) or property for which differences between book value and adjusted tax basis are created when a partnership revalues property pursuant to § 1.704–1(b)(2)(iv)(*f*).

(ii) *Section 704(c)(1)(C) partner.* The term *section 704(c)(1)(C) partner* means a partner that contributes section 704(c)(1)(C) property to a partnership.

(iii) *Section 704(c)(1)(C) basis adjustment.* A property's section 704(c)(1)(C) basis adjustment is initially equal to the excess of the adjusted basis of section 704(c)(1)(C) property (determined without regard to paragraph (f)(1)(ii) of this section) over its fair market value immediately before the contribution, and is subsequently adjusted for the recovery of the section 704(c)(1)(C) basis adjustment under paragraph (f)(3)(ii)(D) of this section.

(3) *Operational rules*—(i) *In general.* Except as provided in this section, section 704(c)(1)(C) property is subject to the rules and regulations applicable to section 704(c) property. *See,* for example, § 1.704–3(a)(9).

(ii) *Effect of section 704(c)(1)(C) basis adjustment*—(A) *In general.* The section 704(c)(1)(C) basis adjustment is an adjustment to the basis of partnership property with respect to the section 704(c)(1)(C) partner only. A section 704(c)(1)(C) basis adjustment amount is excluded from the partnership's basis of section 704(c)(1)(C) property. Thus, for purposes of calculating income, deduction, gain, and loss, the section 704(c)(1)(C) partner will have a special basis for section 704(c)(1)(C) property in which the partner has a section 704(c)(1)(C) basis adjustment. The section 704(c)(1)(C) basis adjustment has no effect on the partnership's computation of any item under section 703.

(B) *Computation of section 704(c)(1)(C) partner's distributive share of partnership items.* The partnership first computes its items of income, deduction, gain, or loss at the partnership level under section 703. The partnership then allocates the partnership items among the partners, including the section 704(c)(1)(C) partner, in accordance with section 704, and adjusts the partners' capital accounts accordingly. The partnership then adjusts the section 704(c)(1)(C) partner's distributive share of the items of partnership income, deduction, gain, or loss in accordance with paragraphs (f)(3)(ii)(C) and (D) of this section, to reflect the effects of the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment. These adjustments to the section 704(c)(1)(C) partner's distributive share must be reflected on Schedules K and K–1 of the partnership's return (Form 1065). The adjustments to the section 704(c)(1)(C) partner's distributive shares do not affect the section 704(c)(1)(C) partner's capital account.

(C) *Effect of section 704(c)(1)(C) basis adjustment in determining items of income, gain, or loss.* The amount of a section 704(c)(1)(C) partner's income, gain, or loss from the sale or exchange of partnership property in which the section 704(c)(1)(C) partner has a section 704(c)(1)(C) basis adjustment is equal to the section 704(c)(1)(C) partner's share of the partnership's gain or loss from the sale of the property (including any remedial allocations under § 1.704–3(d)), minus the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment for the partnership property.

(D) *Effect of section 704(c)(1)(C) basis adjustment in determining items of deduction*—(*1*) *In general.* If section 704(c)(1)(C) property is subject to amortization under section 197, depreciation under section 168, or other cost recovery in the hands of the section 704(c)(1)(C) partner, the section

704(c)(1)(C) basis adjustment associated with the property is recovered in accordance with section 197(f)(2), section 168(i)(7), or another applicable Internal Revenue Code section. The amount of any section 704(c)(1)(C) basis adjustment that is recovered by the section 704(c)(1)(C) partner in any year is added to the section 704(c)(1)(C) partner's distributive share of the partnership's depreciation or amortization deductions for the year. The basis adjustment is adjusted under section 1016(a)(2) to reflect the recovery of the section 704(c)(1)(C) basis adjustment.

*(2) Example.* A contributes Property, with an adjusted basis of $12,000 and a fair market value of $5,000 on January 1 of the year of contribution, and B contributes $5,000 to PRS, a partnership. Prior to the contribution, A depreciates Property under section 168 over 10 years using the straight-line method and the half-year convention. On the contribution date, Property has 7.5 years remaining in its recovery period. Property is section 704(c)(1)(C) property, and A's section 704(c)(1)(C) basis adjustment is $7,000. PRS's basis in Property is $5,000 (fair market value) and, in accordance with section 168(i)(7), the depreciation is $667 per year ($5,000 divided by 7.5 years), which is shared equally between A and B. A's $7,000 section 704(c)(1)(C) basis adjustment is subject to depreciation of $933 per year in accordance with section 168(i)(7) ($7,000 divided by 7.5 years), which is taken into account by A.

(iii) *Transfer of section 704(c)(1)(C) partner's partnership interest*—(A) *General rule.* Except as provided in paragraph (f)(3)(iii)(B) of this section, if a section 704(c)(1)(C) partner transfers its partnership interest, the portion of the section 704(c)(1)(C) basis adjustment attributable to the interest transferred is eliminated and the transferee is not treated as the section 704(c)(1)(C) partner with respect to the interest transferred. The transferor remains the section 704(c)(1)(C) partner with respect to any remaining section 704(c)(1)(C) basis adjustment.

(B) *Special rules*—(*1*) *General rule for transfer of partnership interest in nonrecognition transaction.* Except as provided in paragraph (f)(3)(iii)(B)(*2*) of this section, paragraph (f)(3)(iii)(A) of this section does not apply to the extent a section 704(c)(1)(C) partner transfers its partnership interest in a nonrecognition transaction. Instead, the transferee of all or a portion of a section 704(c)(1)(C) partner's partnership interest succeeds to the transferor's section 704(c)(1)(C) basis adjustments in an amount attributable to the interest transferred and the transferee will be treated as the section 704(c)(1)(C) partner with respect to the transferred interest. Regardless of whether a section 754 election is in effect or a substantial built-in loss exists with respect to the transfer, the amount of any section 704(c)(1)(C) basis adjustment with respect to section 704(c)(1)(C) property to which the transferee succeeds shall be decreased by the amount of the negative section 743(b) adjustment that would be allocated to the section 704(c)(1)(C) property pursuant to the provisions of § 1.755–1 if the partnership had a section 754 election in effect upon the transfer. If the nonrecognition transaction is described in section 168(i)(7)(B), then the rules in section 168(i)(7)(A) apply with respect to transferor's cost recovery deductions under section 168. If gain or loss is recognized on the transaction, appropriate adjustments must be made to the section 704(c)(1)(C) basis adjustment.

(*2*) *Exception for gifts.* Paragraph (f)(3)(iii)(B)(*1*) of this section does not apply to the transfer of all or a portion of a section 704(c)(1)(C) partner's partnership interest by gift.

(C) *Examples.* The following examples illustrate the principles of this paragraph (f)(3)(iii)—

*Example 1. Sale of entire partnership interest.* In Year 1, A contributes non-depreciable Property, with an adjusted basis of $11,000 and a fair market value of $5,000, and B and C each contribute $5,000 cash to PRS, a partnership. PRS's basis in Property is $5,000, and A's section 704(c)(1)(C) basis adjustment in Property is $6,000. In Year 3, Property's fair market value is unchanged and A's section 704(c)(1)(C) basis adjustment remains $6,000. D purchases A's interest in PRS for its fair market value of $5,000. PRS does not have a section 754 election in effect in Year 3. A recognizes a loss of $6,000 on the sale, which equals the excess of its basis in PRS ($11,000) over the amount realized on the sale ($5,000). Pursuant to paragraph (f)(3)(iii)(A) of this section, D does not succeed to A's section 704(c)(1)(C) basis adjustment, which is eliminated upon the sale.

*Example 2. Sale of portion of partnership interest.* Assume the same facts as *Example 1* except that D purchases 50 percent of A's interest in PRS for its fair market value of $2,500. A recognizes a loss of $3,000 on the sale, which equals the excess of its basis in the 50 percent interest in PRS ($5,500) over the amount realized on the sale ($2,500). Pursuant to paragraph (f)(3)(iii)(A) of this section, D does not succeed to A's section 704(c)(1)(C) basis adjustment, and A's section 704(c)(1)(C) basis adjustment is reduced to $3,000 upon the sale.

*Example 3. Section 721 transaction*—(i) Assume the same facts as *Example 1* except that instead of selling its interest in PRS to D in Year 3, A contributes its interest in PRS to UTP, a partnership, in exchange for a 50 percent interest in UTP. Following the contribution, UTP's basis in PRS is $5,000 plus a $6,000 section 704(c)(1)(C) basis adjustment solely allocable to A. Under the facts of this example, UTP's share of basis in PRS property is the same.

(ii) Under paragraph (f)(3)(iii)(B)(*1*) of this section, UTP succeeds to A's $6,000 section 704(c)(1)(C) basis adjustment in Property. PRS does not have a section 754 election in effect and does not have a substantial built-in loss (within the meaning of § 1.743–1(a)(2)(i)) with respect to the transfer. Paragraph (f)(3)(iii)(B)(*1*) of this section requires PRS to reduce the amount of the section 704(c)(1)(C) basis adjustment by the amount of the negative section 743(b) adjustment that would be allocated to Property if PRS had an election under section 754 in effect. Because UTP's basis in PRS equals UTP's share of basis in PRS property, no negative section 743(b) adjustment would result from the transfer. Accordingly, UTP's section 704(c)(1)(C) basis adjustment in Property is $6,000. Pursuant to paragraph (a)(9) of this section, UTP must allocate its distributive share of PRS's items with respect to the section 704(c)(1)(C) basis adjustment solely to A.

(iii) In Year 3, PRS sells Property for its fair market value of $5,000. PRS realizes no gain or loss on the sale. Pursuant to paragraph (f)(3)(ii)(C) of this section, PRS reduces UTP's allocable gain from the sale of Property ($0) by the amount of UTP's section 704(c)(1)(C) basis adjustment for Property ($6,000). Thus, UTP is allocated a $6,000 loss. Pursuant to paragraph (a)(9) of this section, UTP must allocate the $6,000 loss with respect to the section 704(c)(1)(C) basis adjustment to A. A's basis in UTP decreases from $11,000 to $5,000 and its section 704(c)(1)(C) basis adjustment in UTP is eliminated.

*Example 4. Interaction with section 362(e)(2)(A)*—(i) Assume the same facts as *Example 1* except that instead of selling its interest in PRS to D in Year 3, A contributes its interest in PRS to Y Corp, a corporation, in a transfer described in section 351. PRS has a section 754 election in effect. A's basis in its Y Corp stock is $11,000 under section 358.

(ii) A and Y Corp do not elect to apply the provisions of section 362(e)(2)(C). Therefore, section 362(e)(2)(A) will apply because Y Corp's basis in PRS ($11,000) would exceed the fair market value of PRS ($5,000) immediately after the transaction. Thus, pursuant to section 362(e)(2)(B), Y Corp's basis in PRS will be $5,000. Y Corp succeeds to A's $6,000 section 704(c)(1)(C) basis adjustment in Property pursuant to paragraph (f)(3)(iii)(B)(*1*) of this section. Pursuant to § 1.743–1, Y Corp's section 743(b) adjustment is ($6,000), or the difference between Y Corp's basis in PRS of $5,000 and Y Corp's share of the adjusted basis of PRS's property of $11,000 (which is Y Corp's cash on liquidation of $5,000, increased by the $6,000 tax loss that would be allocated to Y Corp upon a hypothetical transaction). The ($6,000) section 743(b) adjustment will be allocated to PRS's property in accordance with section 755 and the regulations thereunder.

*Example 5. Gift of partnership interest.* Assume the same facts as *Example 1* except that instead of selling its PRS interest to D in Year 3, A makes a gift of its PRS interest

to D. Pursuant to paragraph (f)(3)(iii)(B)(*2*) of this section, D does not succeed to any of A's section 704(c)(1)(C) basis adjustment in Property. The $6,000 section 704(c)(1)(C) basis adjustment is eliminated upon the gift.

(iv) *Transfer of section 704(c)(1)(C) property by partnership*—(A) *Like-kind exchange*—(*1*) *General rule.* If a partnership disposes of section 704(c)(1)(C) property in a like-kind exchange described in section 1031 and the regulations thereunder, the substituted basis property (as defined in section 7701(a)(42)) received by the partnership is treated, solely with respect to the section 704(c)(1)(C) partner, as section 704(c)(1)(C) property with the same section 704(c)(1)(C) basis adjustment as the section 704(c)(1)(C) property disposed of by the partnership (with appropriate adjustments for any portion of the section 704(c)(1)(C) basis adjustment taken into account in determining the section 704(c)(1)(C) partner's gain or loss recognized on the transfer).

*(2) Example.* A contributes Property 1 with an adjusted basis of $12,000 and a fair market value of $10,000 and B contributes $10,000 cash to PRS, a partnership. A has a $2,000 section 704(c)(1)(C) basis adjustment in Property 1, and PRS has an adjusted basis in Property 1 of $10,000, or its fair market value. PRS subsequently engages in a like-kind exchange under section 1031 of Property 1 when the fair market value of Property 1 is $13,000 and receives Property 2 with a fair market value of $12,000 and $1,000 cash in exchange. PRS's gain on the transaction is $3,000 ($13,000 minus PRS's $10,000 adjusted basis) but is recognized only to the extent of the cash received of $1,000, of which $500 is allocable to A. As provided in paragraph (f)(3)(iv)(A)(*1*) of this section, Property 2 is treated as section 704(c)(1)(C) property with respect to A and has the same section 704(c)(1)(C) basis adjustment as Property 1. Because PRS recognized gain on the transaction, A must use $500 of its section 704(c)(1)(C) basis adjustment to reduce A's gain to $0. Therefore, A's $2,000 section 704(c)(1)(C) basis adjustment is reduced to $1,500.

(B) *Contribution of 704(c)(1)(C) property in section 721 transaction*—(*1*) *In general.* The rules set forth in this paragraph (f)(3)(iv)(B) apply if a section 704(c)(1)(C) partner contributes section 704(c)(1)(C) property to an upper-tier partnership, and that upper-tier partnership subsequently contributes the section 704(c)(1)(C) property to a lower-tier partnership in a transaction described in section 721(a) (whether as part of a single transaction or as separate transactions). The interest in the lower-tier partnership received by the upper-tier partnership is treated as the section 704(c)(1)(C) property with the same section 704(c)(1)(C) basis adjustment as the contributed property. The lower-tier partnership determines its basis in the contributed property by excluding the existing section 704(c)(1)(C) basis adjustment under the principles of paragraph (f)(3)(ii)(A) of this section. However, the lower-tier partnership also succeeds to the upper-tier partnership's section 704(c)(1)(C) basis adjustment. The portion of the upper-tier partnership's basis in its interest in the lower-tier partnership attributable to the section 704(c)(1)(C) basis adjustment must be segregated and allocated solely to the section 704(c)(1)(C) partner for whom the initial section 704(c)(1)(C) basis adjustment was made. Similarly, the section 704(c)(1)(C) basis adjustment to which the lower-tier partnership succeeds must be segregated and allocated solely to the upper-tier partnership, and the section 704(c)(1)(C) partner for whom the initial section 704(c)(1)(C) basis adjustment was made. If gain or loss is recognized on the transaction, appropriate adjustments must be made to the section 704(c)(1)(C) basis adjustment.

(*2*) *Special rules.* (*a*) To the extent that any section 704(c)(1)(C) basis adjustment in a tiered partnership is recovered under paragraphs (f)(3)(ii)(C) or (D) of this section, or is otherwise reduced, upper- or lower-tier partnerships in the tiered structure must make conforming reductions to related section 704(c)(1)(C) basis adjustments to prevent duplication of loss.

(*b*) Section 704(c)(1)(C) property that is contributed by an upper-tier partnership to a lower-tier partnership will have an additional section 704(c)(1)(C) basis adjustment if the value of the section 704(c)(1)(C) property is less than its tax basis (as adjusted under paragraph (f)(3)(ii) of this section) at the time of the transfer to the lower-tier partnership. Any additional section 704(c)(1)(C) basis adjustment determined under this paragraph will be allocated among the partners of the upper-tier partnership in a manner that reflects their relative shares of that loss.

*(3) Example 1*— (i) In Year 1, A contributes Property with an adjusted basis of $11,000 and a fair market value of $5,000, and B contributes $5,000 cash to UTP, a partnership. Later in Year 1, when Property's basis has not changed, and Property is worth at least $5,000, UTP contributes Property to LTP in a section 721 transaction for a 50-percent interest in LTP. In Year 2, LTP sells Property for its fair market value of $29,000.

(ii) A has a $6,000 section 704(c)(1)(C) basis adjustment in Property. After the section 721 transaction, A's section 704(c)(1)(C) basis adjustment in Property becomes A's section 704(c)(1)(C) adjustment in UTP's interest in LTP. UTP has a section 704(c)(1)(C) adjustment in Property in the amount of A's section 704(c)(1)(C) adjustment in Property. This section 704(c)(1)(C) adjustment must be segregated and allocated solely to A. UTP's basis in its interest in LTP is determined without reference to the section 704(c)(1)(C) adjustment. Thus, UTP's basis in LTP is $5,000. LTP's basis in Property is determined without reference to the section 704(c)(1)(C) basis adjustment; therefore, LTP's basis in Property is $5,000.

(iii) Upon the sale of Property, LTP realizes a gain of $24,000 ($29,000 fair market value minus $5,000 adjusted basis). UTP's allocable share of the $24,000 gain from the sale of Property by LTP is $12,000, reduced by UTP's $6,000 section 704(c)(1)(C) basis adjustment in Property. Because UTP's section 704(c)(1)(C) basis adjustment must be segregated and allocated solely to A, UTP allocates the $12,000 of gain equally between A and B, but allocates the recovery of the $6,000 section 704(c)(1)(C) basis adjustment to A. Therefore, pursuant to paragraph (f)(3)(ii)(C) of this section, A recognizes no gain or loss on the sale (A's $6,000 share of UTP's gain minus the $6,000 section 704(c)(1)(C) basis adjustment). Because UTP's section 704(c)(1)(C) adjustment in Property is used, A's section 704(c)(1)(C) basis adjustment in UTP's interest in LTP is reduced to $0 to prevent duplication of loss pursuant to paragraph (f)(3)(iv)(B)(*2*)(*a*) of this section.

*Example 2*— Assume the same facts as *Example 1,* except that in Year 2, UTP sells its entire interest in LTP to D for its fair market value of $17,000. UTP recognizes a $12,000 gain on the sale, which equals the excess of UTP's amount realized on the sale ($17,000) over UTP's basis in LTP ($5,000). UTP allocates the $12,000 gain equally to A and B. However, A's $6,000 section 704(c)(1)(C) adjustment in UTP's interest in LTP offsets A's share of the gain. Therefore, A recognizes no gain or loss on the sale. D does not receive any of UTP's section 704(c)(1)(C) basis adjustment in Property, which is eliminated upon the sale.

*Example 3*— (i) Assume the same facts as *Example 1,* except that at the time UTP contributes Property to LTP, the fair market value of Property has fallen to $2,000. In Year 2, LTP sells Property for its fair market value of $2,000.

(ii) A has a $6,000 section 704(c)(1)(C) basis adjustment in Property. After the section 721 transaction, pursuant to paragraph (f)(3)(iv)(B)(*1*) of this section, A's section 704(c)(1)(C) basis adjustment in Property becomes A's section 704(c)(1)(C) adjustment in UTP's interest in LTP. Pursuant to paragraph (f)(3)(iv)(B)(*1*) of this section, UTP has a section 704(c)(1)(C) adjustment in Property in the amount of A's section 704(c)(1)(C) adjustment in Property. This section 704(c)(1)(C) adjustment must be segregated and allocated solely to A. Because UTP's basis in Property ($5,000) exceeds the fair market value of Property ($2,000) by $3,000 at the time of UTP's contribution to LTP, UTP has an additional section 704(c)(1)(C) adjustment of $3,000 in Property pursuant to paragraph (f)(3)(iv)(B)(*2*)(*b*) of this section. Partners A and B share equally in this $3,000 section 704(c)(1)(C)

adjustment. UTP's basis in its interest in LTP is determined without reference to A's section 704(c)(1)(C) adjustment. Thus, UTP's basis in LTP is $5,000. Pursuant to paragraph (f)(3)(iv)(B)(*1*) of this section, LTP's basis in Property is determined without reference to either section 704(c)(1)(C) basis adjustment; therefore, LTP's basis in Property is $2,000.

(iii) Upon the sale of Property, LTP recognizes no gain or loss ($2,000 sales price minus $2,000 adjusted basis). However, the sale of Property triggers UTP's two separate section 704(c)(1)(C) basis adjustments. First, UTP applies the $3,000 section 704(c)(1)(C) adjustment attributable to the built-in loss in Property arising after A contributed Property to UTP. This results in an allocation of ($1,500) of loss to each of A and B. Next, UTP applies the $6,000 section 704(c)(1)(C) basis adjustment attributable to A's initial contribution of Property to UTP, resulting in an additional ($6,000) of loss allocated to A. Thus, the sale of Property by LTP results in A recognizing ($7,500) of loss, and B recognizing ($1,500) of loss. Pursuant to paragraph (f)(3)(iv)(B)(*2*)(*a*) of this section, because UTP's section 704(c)(1)(C) adjustment in Property is used, A's section 704(c)(1)(C) basis adjustment in UTP's interest in LTP is reduced to $0 to prevent duplication of loss.

(C) *Section 351 transactions*—(*1*) *Basis in transferred property.* A corporation's adjusted basis in property transferred to the corporation by a partnership in a transaction described in section 351 is determined under section 362 (including for purposes of applying *section 362(e)*) by taking into account any section 704(c)(1)(C) basis adjustment for the property (other than any portion of a section 704(c)(1)(C) basis adjustment that reduces a partner's gain under paragraph (f)(3)(iv)(C)(*2*) of this section).

(*2*) *Partnership gain.* The amount of gain, if any, recognized by the partnership on the transfer of property by the partnership to a corporation in a transfer described in section 351 is determined without regard to any section 704(c)(1)(C) basis adjustment for the transferred property. The amount of gain, if any, recognized by the partnership on the transfer that is allocated to the section 704(c)(1)(C) partner is adjusted to reflect the partner's section 704(c)(1)(C) basis adjustment in the transferred property.

(*3*) *Basis in stock.* The partnership's adjusted basis in stock received from a corporation in a transfer described in section 351 is determined without regard to the section 704(c)(1)(C) basis adjustment in property transferred to the corporation in the section 351 exchange. A partner with a section 704(c)(1)(C) basis adjustment in property transferred to the corporation, however, has a basis adjustment in the stock received by the partnership in the section 351 exchange in an amount equal to the partner's section 704(c)(1)(C) basis adjustment in the transferred property, reduced by any portion of the section 704(c)(1)(C) basis adjustment that reduced the partner's gain under paragraph (f)(3)(iv)(C)(*2*) of this section.

(*4*) *Example.* The following example illustrates the provisions of this paragraph (f)(3)(iv)(C).

*Example. Section 351 transaction* —(i) In Year 1, A contributes $10,000 cash and B contributes Property with an adjusted basis of $18,000 and a fair market value of $10,000 to PRS, a partnership. PRS takes Property with a basis of $10,000. B's section 704(c)(1)(C) basis adjustment for Property is $8,000. PRS contributes Property to Y Corp in a section 351 transaction. Under section 362(e)(2)(A), Y Corp takes a $10,000 basis in Property. PRS's basis in its Y Corp stock is $10,000 under section 358. Pursuant to paragraph (f)(3)(iv)(C)(*3*) of this section, B has a section 704(c)(1)(C) basis adjustment of $8,000 in the Y Corp stock received by PRS in the section 351 exchange.

(ii) In Year 2, Y Corp sells Property for its fair market value of $10,000. Y Corp recognizes no gain or loss on the sale of Property. Pursuant to paragraph (f)(3)(iv)(C)(*1*) of this section, B does not take into account its section 704(c)(1)(C) basis adjustment upon the sale by Y Corp of Property. Instead, B will take the section 704(c)(1)(C) basis adjustment into account when PRS disposes of the Y Corp stock.

(D) *Section 708(b)(1)(B) transactions*—(*1*) *In general.* A partner with a section 704(c)(1)(C) basis adjustment in section 704(c)(1)(C) property held by a partnership that terminates under section 708(b)(1)(B) will continue to have the same section 704(c)(1)(C) basis adjustment for section 704(c)(1)(C) property deemed contributed by the terminated partnership to the new partnership under § 1.708–1(b)(4). In addition, the deemed contribution of property by a terminated partnership to a new partnership is not subject to this section and does not create a section 704(c)(1)(C) basis adjustment.

*(2) Example.* A contributes Property with an adjusted basis of $11,000 and a fair market value of $5,000 and B contributes $5,000 cash to PRS, a partnership. B sells its entire interest in PRS to C for its fair market value of $5,000, which terminates PRS under section 708(b)(1)(B). Under § 1.708–1(b)(4), PRS is deemed to contribute all of its assets and liabilities to a new partnership (New PRS) in exchange for an interest in New PRS. Immediately thereafter, PRS is deemed to distribute its interest in New PRS equally to A and C in complete liquidation of PRS. New PRS takes Property with a basis of $5,000 and A retains its $6,000 section 704(c)(1)(C) basis adjustment related to Property inside New PRS.

(E) *Disposition in an installment sale.* If a partnership disposes of section 704(c)(1)(C) property in an installment sale (as defined in section 453(b)), the installment obligation received by the partnership is treated as the section 704(c)(1)(C) property with the same section 704(c)(1)(C) basis adjustment as the section 704(c)(1)(C) property disposed of by the partnership (with appropriate adjustments for any gain recognized on the installment sale).

(F) *Contributed contracts.* If a partner contributes to a partnership a contract that is section 704(c)(1)(C) property, and the partnership subsequently acquires property pursuant to the contract in a transaction in which less than all of the loss is recognized, then the acquired property is treated as section 704(c)(1)(C) property with the same section 704(c)(1)(C) basis adjustment as the contract (with appropriate adjustments for any gain or loss recognized on the acquisition). For this purpose, the term *contract* includes, but is not limited to, options, forward contracts, and futures contracts.

(v) *Distributions*—(A) *Current distribution of section 704(c)(1)(C) property to section 704(c)(1)(C) partner.* If a partnership distributes property to a partner and the partner has a section 704(c)(1)(C) basis adjustment for the property, the section 704(c)(1)(C) basis adjustment is taken into account under section 732. *See* § 1.732–2(a). For certain adjustments to the basis of remaining partnership property after the distribution of section 704(c)(1)(C) property to the section 704(c)(1)(C) partner, see § 1.734–2(c).

(B) *Distribution of section 704(c)(1)(C) property to another partner.* If a partner receives a distribution of property in which another partner has a section 704(c)(1)(C) basis adjustment, the distributee does not take the section 704(c)(1)(C) basis adjustment into account under section 732. If section 704(c)(1)(B) applies to treat the section 704(c)(1)(C) partner as recognizing loss on the sale of the distributed property, the section 704(c)(1)(C) basis adjustment is taken into account in determining the amount of the loss. A section 704(c)(1)(C) partner with a section 704(c)(1)(C) basis adjustment in the distributed property that is not taken into account as described in the prior sentence reallocates the section 704(c)(1)(C) basis adjustment among the remaining items of partnership property under § 1.755–1(c).

(C) *Distributions in complete liquidation of a section 704(c)(1)(C) partner's interest.* If a section 704(c)(1)(C) partner receives a distribution of property (whether or not

the partner has a section 704(c)(1)(C) basis adjustment in the property) in liquidation of its interest in the partnership, the adjusted basis to the partnership of the distributed property immediately before the distribution includes the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustment for the property in which the section 704(c)(1)(C) partner relinquished an interest. For purposes of determining the section 704(c)(1)(C) partner's basis in distributed property under section 732, the partnership reallocates any section 704(c)(1)(C) basis adjustment from section 704(c)(1)(C) property retained by the partnership to distributed properties of like character under the principles of § 1.755–1(c)(i), after applying sections 704(c)(1)(B) and 737. If section 704(c)(1)(C) property is retained by the partnership, and no property of like character is distributed, then that property's section 704(c)(1)(C) basis adjustment is not reallocated to the distributed property for purposes of applying section 732. *See* § 1.734–2(c)(2) for rules regarding the treatment of any section 704(c)(1)(C) adjustment that is not fully utilized by the section 704(c)(1)(C) partner.

(D) *Examples.* The following examples illustrate the principles of this paragraph (f)(3)(v).

*Example 1. Current distribution of section 704(c)(1)(C) property to section 704(c)(1)(C) partner*—(i) A contributes Property 1 with an adjusted basis of $15,000 and a fair market value of $10,000 and Property 2 with an adjusted basis of $5,000 and a fair market value of $20,000 and B contributes $30,000 cash to PRS, a partnership. Property 1 and Property 2 are both capital assets. When Property 1 has a fair market value of $12,000, and neither A nor B's basis in PRS has changed, PRS distributes Property 1 to A in a current distribution.

(ii) Property 1 has an adjusted basis to PRS of $10,000, and A has a section 704(c)(1)(C) basis adjustment of $5,000 in Property 1. Pursuant to § 1.732–2(c) and paragraph (f)(3)(v)(A) of this section, for purposes of section 732(a)(1), the adjusted basis of Property 1 to PRS immediately before the distribution is $15,000 (PRS's $10,000 adjusted basis increased by A's $5,000 section 704(c)(1)(C) basis adjustment for Property 1) and, therefore. A takes a $15,000 adjusted basis in Property 1 upon the distribution. Accordingly, no adjustment is required to PRS's property under section 734.

*Example 2. Current distribution of section 704(c)(1)(C) property to another partner.* Assume the same facts as *Example 1* except PRS distributes Property 1 to B in a distribution to which section 704(c)(1)(B) does not apply. B does not take any portion of A's section 704(c)(1)(C) basis adjustment into account. Accordingly, pursuant to § 1.732–1(a) and paragraph (f)(3)(v)(B) of this section, for purposes of section 732(a)(1), the adjusted basis of Property 1 to PRS immediately before the distribution is $10,000 and, therefore, B takes a $10,000 adjusted basis in Property 1 upon the distribution. Accordingly, no adjustment is required to PRS's property under section 734. A's section 704(c)(1)(C) basis adjustment in Property 1 is reallocated to Property 2 in accordance with § 1.755–1(c).

*Example 3.* (i) *Liquidating distribution to section 704(c)(1)(C) partner.* In Year 1, A contributes Property 1 with an adjusted basis of $15,000 and a fair market value of $10,000 and Property 2 with an adjusted basis of $5,000 and a fair market value of $20,000 and B and C each contribute $30,000 cash to PRS, a partnership. Property 1 and Property 2 are both capital assets. In a later year, when the fair market value of Property 2 is still $20,000, and no partner's basis in PRS has changed, PRS distributes Property 2 and $10,000 to A in complete liquidation of A's partnership interest in a distribution to which section 737 does not apply. PRS has a section 754 election in effect for the year of the distribution.

(ii) Property 2 has an adjusted basis to PRS of $5,000, and A has a section 704(c)(1)(C) basis adjustment of $5,000 in Property 1. Pursuant to § 1.732–2(c) and paragraph (f)(3)(v)(C) of this section, for purposes of section 732(b), the adjusted basis of Property 2 to PRS immediately before the distribution is $10,000 (PRS's $5,000 adjusted basis in Property 2 increased by A's $5,000 section 704(c)(1)(C) basis adjustment for Property 1), and A's adjusted basis in Property 2 upon the distribution is $10,000 (A's $20,000 basis in PRS minus the $10,000 cash distributed). Therefore, no adjustment is required to PRS's property under section 734.

(vi) *Returns.* A partnership that owns property with a section 704(c)(1)(C) basis adjustment must attach a statement to the partnership return for the year of the contribution setting forth the name and taxpayer identification number of the section 704(c)(1)(C) partner as well as the section 704(c)(1)(C) basis adjustment and the section 704(c)(1)(C) property to which the adjustment relates.

(g) * * *. The provisions of paragraph (f) of this section apply to partnership contributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 3.** Section 1.704–4 is amended as follows:

■ 1. In paragraph (a)(1), by removing ''five years'' and adding in its place ''seven years''.

■ 2. In paragraph (a)(4) by removing ''five-year'' and adding in its place ''seven-year'' each time it appears.

■ 3. By revising paragraph (a)(4)(i).

■ 4. In paragraph (f)(2), *Examples 1* and *2,* by removing the phrase ''five-year'' and adding in its place ''seven-year'' each time it appears and removing ''2000'' and adding in its place ''2002'' each time it appears.

■ 5. By adding a sentence to the end of paragraph (g).

The revision and addition read as follows:

**§ 1.704–4 Distribution of contributed property.**

(a) * * *

(4) *Determination of seven-year period*—(i) *General rule.* The seven-year period specified in paragraph (a)(1) of this section begins on, and includes, the date of contribution and ends on, and includes, the last date that is within seven years of the contribution. For example, if a partner contributes section 704(c) property to a partnership on May 15, 2016, the seven-year period with respect to the section 704(c) property ends on, and includes, May 14, 2023.

* * * * *

(g) * * * The provisions of this section relating to the seven-year period for determining the applicability of section 704(c)(1)(B) are applicable for partnership contributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 4.** Section 1.732–2 is amended by:

■ 1. Redesignating paragraph (b) introductory text as (b)(1) introductory text and revising it.

■ 2. Adding paragraph (b)(2.

■ 3. Redesignating paragraph (c) as paragraph (d).

■ 4. Adding a new paragraph (c).

The revisions and addition reads as follows:

**§ 1.732–2 Special partnership basis of distributed property.**

* * * * *

(b) *Adjustments under section 743(b)*—(1) *In general.* In the case of a distribution of property to a partner who acquired any part of its interest in a transfer, if there was an election under section 754 in effect with respect to the transfer, or if the partnership had a substantial built-in loss (as defined in § 1.743–1(a)(2)(i)) immediately after the transfer, then, for purposes of section 732 (other than subsection (d) thereof), the adjusted partnership basis of the distributed property shall take into account, in addition to any adjustments under section 734(b), the transferee's special basis adjustment for the distributed property under section 743(b). The application of this paragraph may be illustrated by the following example:

* * * * *

(2) *Effective/applicability date.* Paragraph (b)(1) of this section relating to substantial built-in losses is

applicable for partnership distributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(c) *Adjustments under section 704(c)(1)(C)*—(1) *In general.* In the case of a distribution of property to a section 704(c)(1)(C) partner (as defined in § 1.704–3(f)(2)(ii)), for purposes of section 732 (other than subsection (d) thereof), the adjusted partnership basis of the distributed property shall take into account, in addition to any adjustments under section 734(b), the distributee's section 704(c)(1)(C) basis adjustment (if any) for the distributed property.

(2) *Effective/applicability date.* Paragraph (c)(1) of this section is applicable for partnership distributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 5.** Section 1.734–1 is amended by:

■ 1. Revising the section heading.

■ 2. Revising paragraph (a).

■ 3. Revising paragraph (b)(2)(i).

■ 4. Adding *Example 3 following paragraph (b)(2)(ii).*

■ 5. Adding a sentence at the end of paragraph (d).

■ 6. Adding paragraphs (f), (g), and (h).

The revisions and additions read as follows:

**§ 1.734–1 Adjustment to basis of undistributed partnership property where partnership has a section 754 election or there is a substantial basis reduction with respect to a distribution.**

(a) *General rule*—(1) *Adjustments to basis.* A partnership shall not adjust the basis of partnership property as the result of a distribution of property to a partner unless the election provided in section 754 (relating to optional adjustment to basis of partnership property) is in effect or there is a substantial basis reduction (within the meaning of paragraph (a)(2)(i) of this section) with respect to the distribution.

(2) *Substantial basis reduction*—(i) *In general.* For purposes of this section, there is a substantial basis reduction with respect to a distribution of property or properties to a partner if the sum of the amounts described in section 734(b)(2)(A) and (b)(2)(B) exceeds $250,000. If there is a substantial basis reduction under this section, the partnership is treated as having an election under section 754 in effect solely for the distribution to which the substantial basis reduction relates.

(ii) *Special rules for tiered partnerships.* See paragraph (f) of this section for special rules regarding tiered partnerships.

(iii) *Special rules for securitization partnerships.* See paragraph (g) of this section for special rules regarding securitization partnerships.

(b) * * *

(2) *Decrease in basis.* (i) When a partnership with a section 754 election in effect makes a distribution in liquidation of a partner's entire interest in the partnership, or when there is a substantial basis reduction (within the meaning of paragraph (a)(2)(i) of this section), the partnership shall decrease the adjusted basis of the remaining partnership property by—

(ii) * * *

*Example 3* —(i) A, B, and C each contribute $2 million to PRS, a partnership. PRS purchases Property 1 and Property 2, both of which are capital assets, for $1 million and $5 million respectively. In Year 2, the fair market value of Property 1 increases to $3 million and the fair market value of Property 2 increases to $6 million. Also in Year 2, PRS distributes Property 1 to C in liquidation of C's interest in PRS at a time when C's basis in its PRS interest is still $2 million. PRS does not have an election under section 754 in effect.

(ii) Under section 732, the basis of Property 1 in the hands of C is $2 million. Because the excess of C's adjusted basis in Property 1 ($2 million) over PRS's adjusted basis in Property 1 ($1 million) is $1 million, the amount described in section 734(b)(2)(B) ($1 million) exceeds $250,000, and therefore, there is a substantial basis reduction with respect to the distribution. Accordingly, pursuant to paragraph (a)(2)(i) of this section, PRS is treated as having a section 754 election in effect in Year 2 and must reduce its basis in Property 2 in accordance with paragraph (b)(2)(i) of this section.

* * * * *

(d) * * * A partnership required to adjust the basis of partnership property following the distribution of property because there is a substantial basis reduction (within the meaning of paragraph (a)(2)(i) of this section) with respect to the distribution is subject to, and required to comply with, the provisions of this paragraph (d) solely with respect to the distribution to which the substantial basis reduction relates.

* * * * *

(f) *Adjustments with respect to tiered partnerships*—(1) *In general.* If an upper-tier partnership makes an adjustment under paragraph (b) of this section to the basis of an interest it holds in a lower-tier partnership that has an election under section 754 in effect, the lower-tier partnership must make adjustments under paragraph (b) of this section to the upper-tier partnership's share of the lower-tier partnership's assets. The amount of the lower-tier partnership's adjustment is equal to the adjustment made by the upper-tier partnership to the basis of its interest in the lower-tier partnership. The lower-tier partnership's adjustment to the upper-tier partnership's share of its assets is for the upper-tier partnership only and does not affect the basis in the lower-tier partnership's property for the other partners of the lower-tier partnership. Additionally, if there is a substantial basis reduction (within the meaning of paragraph (a)(2)(i) of this section) with respect to a distribution by an upper-tier partnership that (either directly or indirectly through one or more partnerships) holds an interest in a lower-tier partnership, each lower-tier partnership is treated, solely with respect to the distribution, as if it had made an election under section 754 for the taxable year in which the distribution occurs. For additional examples of the application of the principles of this paragraph (f)(1), see Revenue Ruling 92–15, 1992–1 CB 215. *See* § 601.601(d)(2)(ii)(b)

*(2) Example* —(i) *Facts.* A, B, and C are equal partners in UTP, a partnership. Each partner's interest in UTP has an adjusted basis and fair market value of $3 million. UTP owns two capital assets with the following adjusted bases and fair market values:

| | Adjusted basis | Fair market value |
|---|---|---|
| Property 1 | $2.2 million .. | $3 million. |
| Property 2 | $2.8 million .. | $3 million. |

UTP also owns a 50 percent interest in LTP, a partnership. UTP's interest in LTP has an adjusted basis of $4 million and a fair market value of $3 million. LTP owns one asset, Property 3, a capital asset, which has an adjusted basis of $8 million and a fair market value of $6 million. Neither UTP nor LTP has an election under section 754 in effect.

(ii) *Liquidating distribution to A of Property 1.* UTP distributes Property 1 to A in complete liquidation of A's interest in UTP. Under section 732(b), the adjusted basis of Property 1 to A is $3 million. Therefore, there is a substantial basis reduction with respect to the distribution to A because the sum of the amounts described in section 734(b)(2)(A) ($0) and section 734(b)(2)(B) (the excess of $3 million over $2.2 million, or $800,000) exceeds $250,000. Therefore, pursuant to paragraph (b)(2) of this section, UTP must decrease the basis of its property by $800,000. Under § 1.755–1(c), UTP must decrease the adjusted basis of its 50 percent interest in LTP by $800,000. Likewise, pursuant to paragraph (f)(1) of this section, LTP must decrease its basis in UTP's share of Property 3 by $800,000 in accordance with § 1.755–1(c).

(g) *Securitization partnerships.* A securitization partnership (as defined in § 1.743–1(o)(2)) shall not be treated as

having a substantial basis reduction with respect to any distribution of property to a partner.

(h) *Effective/applicability date.* The rules relating to substantial basis reductions in paragraphs (a) and (b) of this section and paragraphs (f) and (g) of this section apply to partnership distributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 6.** Section 1.734–2 is amended by revising the section heading and adding paragraph (c) to read as follows:

**§ 1.734–2 Adjustment after distribution to transferee partner or section 704(c)(1)(C) partner.**

* * * * *

(c)(1) Section 704(c)(1)(C) basis adjustments will be taken into account in determining the basis adjustment under section 734(b). However, section 704(c)(1)(C) basis adjustments, other than a section 704(c)(1)(C) basis adjustment applied as an adjustment to the basis of partnership property pursuant to paragraph (c)(2) of this section, will not be taken into account in making allocations under § 1.755–1(c).

(2) *Liquidating distributions.* If a section 704(c)(1)(C) partner receives a distribution of property (including money) in liquidation of its entire partnership interest, the section 704(c)(1)(C) partner's section 704(c)(1)(C) basis adjustments that are treated as basis in the distributed property pursuant to section 732 will be taken into account in determining the basis adjustment under section 734(b), regardless of whether the distributed property is section 704(c)(1)(C) property. If any section 704(c)(1)(C) basis adjustment cannot be reallocated to distributed property in connection with the distribution, then that remaining section 704(c)(1)(C) basis adjustment shall be treated as a positive section 734(b) adjustment. If the distribution also gives rise to a negative section 734(b) adjustment without regard to the section 704(c)(1)(C) basis adjustment reallocation, then the negative section 734(b) adjustment and the section 704(c)(1)(C) basis adjustment reallocation are netted together, and the net amount is allocated under § 1.755–1(c). If the partnership does not have a section 754 election in effect at the time of the liquidating distribution, the partnership shall be treated as having made a section 754 election solely for purposes of computing any negative section 734(b) adjustment that would arise from the distribution.

(3) The following examples illustrate the provisions of this paragraph (c).

*Example 1* —(i) In Year 1, A contributes $5,000 cash and Property A, a capital asset, with an adjusted basis of $7,000 and a fair market value of $5,000; B contributes $8,000 cash and Property B, a capital asset, with an adjusted basis and fair market value of $2,000; and C contributes $7,000 cash and Property C, a capital asset, with an adjusted basis and fair market value of $3,000 to PRS, a partnership. In Year 3, Property B has appreciated in value to $8,000. PRS distributes Property B and $4,000 to C in complete liquidation of C's interest in PRS at a time when no partner's basis in PRS has changed. PRS revalues its property under § 1.704–1(b)(2)(iv)(*f*) in connection with the distribution, and makes an election under section 754. C recognizes no gain or loss on the distribution.

(ii) C receives Property B with a basis of $6,000 (C's adjusted basis in PRS of $10,000 minus the $4,000 cash distributed). Because PRS has an election under section 754 in effect, PRS must reduce its basis in remaining partnership property under § 1.734–1(b)(2)(ii) by $4,000 (C's $6,000 basis in Property B minus PRS's $2,000 adjusted basis in Property B prior to the distribution. Under § 1.755–1(c)(2)(ii), that basis reduction must be allocated within a class first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation. Any remaining decrease must be allocated in proportion to the properties' adjusted bases. Because there is no unrealized depreciation in either Property A (disregarding A's section 704(c)(1)(C) basis adjustment) or Property C, the decrease must be allocated between the two properties in proportion to their adjusted bases, $2,500 ($4,000 multiplied by $5,000 divided by $8,000) to Property A and $1,500 ($4,000 multiplied by $3,000 divided by $8,000) to Property C.

(iii) In a subsequent year, PRS sells Property A for its fair market value of $7,500 and recognizes $5,000 of gain ($7,500 amount realized minus adjusted basis of $2,500). Pursuant to § 1.704–3(f)(3)(ii)(B), A's $2,500 distributive share of the $5,000 gain from the sale of Property A is reduced by A's $2,000 section 704(c)(1)(C) basis adjustment. Therefore, A recognizes a gain of $500 on the sale.

*Example 2* —(i) A contributes Property 1 with an adjusted basis of $15,000 and a fair market value of $10,000 and Property 2 with an adjusted basis of $15,000 and a fair market value of $20,000, and B and C each contribute $30,000 cash to PRS, a partnership. A has a section 704(c)(1)(C) basis adjustment of $5,000 with respect to Property 1. PRS's adjusted bases in Property 1 and Property 2 are $10,000 and $15,000, respectively. When the fair market value of A's interest in PRS is still $30,000, and no partner's basis in its PRS interest has changed, PRS makes a liquidating distribution to A of $30,000 cash, which results in A realizing no gain or loss. PRS has an election under section 754 in effect.

(ii) A is unable to take into account A's section 704(c)(1)(C) basis adjustment in Property 1 upon the distribution of the cash as described in paragraph (c)(2) of this section because A cannot increase the basis of cash under § 1.704–3(f)(v)(C). Thus, A's $5,000 section 704(c)(1)(C) basis adjustment is treated as a positive section 734(b) adjustment to the partnership's assets retained. PRS's $5,000 section 734(b) adjustment will be allocated to Property 2, increasing its basis from $15,000 to $20,000 under § 1.755–1(c).

*Example 3* —(i) A contributes Property 1 with an adjusted basis of $35,000 and a fair market value of $30,000, B contributes Property 2 with an adjusted basis and fair market value of $30,000, and C contributes $30,000 cash to PRS, a partnership. Property 1 is a capital asset, and Property 2 is inventory (as defined in section 751(d)). PRS's adjusted basis in Property 1 is $30,000 under section 704(c)(1)(C)(ii), and A has a section 704(c)(1)(C) basis adjustment of $5,000 with respect to Property 1. Later, at a time when the value and bases of the properties have not changed, PRS distributes $30,000 cash to A in complete liquidation of A's interest. A recognizes a ($5,000) loss under section 731(a)(2) on the distribution. PRS has an election under section 754 in effect.

(ii) The distribution results in a negative section 734(b) adjustment to capital gain property of ($5,000) (the amount of loss A recognizes under section 731(a)(2)). Additionally, because A is unable to take into account A's section 704(c)(1)(C) basis adjustment in Property 1 upon the distribution of the cash, A's $5,000 section 704(c)(1)(C) basis adjustment is treated as a positive section 734(b) adjustment. Pursuant to paragraph (c)(2) of this section, these two adjustments are netted together, resulting in no adjustment under section 734(b). Therefore, the partnership's basis in Property 1 and Property 2 remains $30,000.

*Example 4* —(i) Assume the same facts as in *Example 3* except that PRS distributes Property 2 to A in complete liquidation of A's interest in a transaction to which section 704(c)(1)(B) and section 737 do not apply.

(ii) Pursuant to § 1.704–3(f)(v)(C), A cannot include A's section 704(c)(1)(C) basis adjustment in the basis of the distributed property, because the section 704(c)(1)(C) property and the distributed property are not of like character. Accordingly, the basis to A of Property 2 is $30,000. A also recognizes a $5,000 capital loss under section 731(a)(2), resulting in a ($5,000) basis adjustment under section 734(b). Because the section 704(c)(1)(C) basis adjustment to Property 1 was not reallocated in connection with the distribution, that remaining $5,000 section 704(c)(1)(C) basis adjustment is treated as a positive section 734(b) adjustment. Pursuant to paragraph (c)(2) of this section, these two adjustments are netted together, resulting in no adjustment under section 734(b). Therefore, the basis of Property 1 remains $30,000.

(4) *Effective/applicability date.* This paragraph (c) applies to partnership distributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 7.** Section 1.737–1 is amended by revising paragraph (c)(1) and adding paragraphs (c)(3) and (4) to read as follows:

**§ 1.737–1 Recognition of precontribution gain.**

* * * * *

(c) *Net precontribution gain*—(1) *General rule.* The distributee partner's net precontribution gain is the net gain (if any) that would have been recognized by the distributee partner under section 704(c)(1)(B) and § 1.704–4 if all property that had been contributed to the partnership by the distributee partner within seven years of the distribution and is held by the partnership immediately before the distribution had been distributed by the partnership to another partner other than the partner who owns, directly or indirectly, more than 50 percent of the capital or profits interest in the partnership.

* * * * *

(3) *Determination of seven-year period*—(i) *General rule.* The seven-year period specified in paragraph (c)(1) of this section begins on, and includes, the date of contribution and ends on, and includes, the last date that is within seven years of the contribution. For example, if a partner contributes 704(c) property to a partnership on May 15, 2016, the seven-year period with respect to the section 704(c) property ends on, and includes, May 14, 2023.

(ii) *Section 708(b)(1)(B) terminations.* A termination of the partnership under section 708(b)(1)(B) does not begin a new seven-year period for each partner with respect to built-in gain and built-in loss property that the terminated partnership is deemed to contribute to the new partnership under § 1.708–1(b)(4). *See* § 1.704–3(a)(3)(ii) for the definitions of built-in gain and built-in loss on section 704(c) property.

(4) *Effective/applicability date.* The provisions of paragraph (c)(1) and (3) of this section relating to the seven-year period for determining the applicability of section 737(b) apply for partnership contributions occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 8**. Section 1.743–1 is amended by:

■ 1. Revising the section heading.
■ 2. Revising paragraph (a).
■ 3. Revising paragraph (b).
■ 4. Redesignating paragraph (f) introductory text as paragraph (f)(1) introductory text and revising it.
■ 5. Adding paragraph (f)(2).
■ 6. In paragraph (h)(1), removing ''§ 1.708–1(b)(1)(iv)'' and adding in its place ''§ 1.708–1(b)(4)''.
■ 7. Revising paragraph (j)(3)(ii) *Example 1.*
■ 8. Revising paragraph (j)(3)(ii) *Example 3.*
■ 9. Revising paragraph (k)(1)(iii).
■ 10. Adding paragraph (k)(2)(iv).
■ 11. Redesignating paragraph (l) as paragraph (p).
■ 12. Adding a new paragraph (l).
■ 13. Adding paragraphs (m), (n), and (o).
■ 14. Revising newly redesignated paragraph (p).

The revisions and additions read as follows:

**§ 1.743–1 Special rules where partnership has a section 754 election in effect or has a substantial built-in loss immediately after transfer of partnership interest.**

(a) *Generally*—(1) *Adjustment to basis.* The basis of partnership property is adjusted as a result of the transfer of an interest in a partnership by sale or exchange or on the death of a partner if the election provided by section 754 (relating to optional adjustments to the basis of partnership property) is in effect with respect to the partnership, or if the partnership has a substantial built-in loss (within the meaning of paragraph (a)(2)(i) of this section) immediately after the transfer.

(2) *Substantial built-in loss*—(i) *In general.* A partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in partnership property exceeds the fair market value of the property (as determined in paragraph (a)(2)(iii) of this section) by more than $250,000 immediately after the transfer.

(ii) *Impact of section 743 basis adjustments and section 704(c)(1)(C) basis adjustments.* For purposes of paragraph (a)(2)(i) of this section, any section 743 or section 704(c)(1)(C) basis adjustments (as defined in § 1.704–3(f)(2)(iii)) (other than the transferee's section 743(b) basis adjustments or section 704(c)(1)(C) basis adjustments) to partnership property are disregarded.

(iii) *Determination of fair market value in tiered situation.* For purposes of paragraph (a)(2)(i) of this section, an upper-tier partnership's fair market value in a lower-tier partnership is equal to the sum of—

(A) The amount of cash that the upper-tier partnership would receive if the lower-tier partnership sold all of its property for cash to an unrelated person for an amount equal to the fair market value of such property, satisfied all of its liabilities (other than § 1.752–7 liabilities), paid an unrelated person to assume all of its § 1.752–7 liabilities in a fully taxable, arm's-length transaction, and liquidated; and

(B) The upper-tier partnership's share of the lower-tier partnership's liabilities as determined under section 752 and the regulations.

*(iv) Example.* A and B are equal partners in PRS, a partnership. PRS owns Property 1, with an adjusted basis of $3 million and a fair market value of $2 million, and Property 2, with an adjusted basis of $1 million and a fair market value of $1 million. In Year 2, A sells 50 percent of its interest in PRS to C for its fair market value of $750,000. PRS does not have section 754 election in effect. Under paragraph (a)(2)(i) of this section, PRS has a substantial built-in loss because, immediately after the transfer, the adjusted basis of PRS's property ($4 million) exceeds the fair market value of the property ($3 million) by more than $250,000. Thus, pursuant to paragraph (a)(1) of this section, PRS must adjust the bases of its properties as if PRS had made a section 754 election for Year 2.

(b) *Determination of adjustment.* In the case of the transfer of an interest in a partnership, either by sale or exchange or as a result of the death of a partner, a partnership that has an election under section 754 in effect or that has a substantial built-in loss (within the meaning of paragraph (a)(2)(i) of this section) —

* * * * *

(f) *Subsequent transfers*—(1) *In general.* Where there has been more than one transfer of a partnership interest, a transferee's basis adjustment is determined without regard to any prior transferee's basis adjustment. In the case of a gift of an interest in a partnership, the donor is treated as transferring, and the donee as receiving, that portion of the basis adjustment attributable to the gifted partnership interest. The following example illustrates the provisions of this paragraph (f)(1):

* * * * *

(2) *Special rules for substituted basis transactions.* Where a partner had a basis adjustment under section 743(b) allocated pursuant to § 1.755–1(b)(2) through (b)(4) that is attributable to an interest that is subsequently transferred in a substituted basis transaction (within the meaning of § 1.755–1(b)(5)), the provisions of paragraph (f)(1) of this section do not apply. Instead, the transferee succeeds to that portion of the transferor's basis adjustment attributable to the transferred partnership interest. The basis adjustment to which the transferee succeeds is taken into account for purposes of determining the transferee's share of the adjusted basis

to the partnership of the partnership's property for purposes of paragraph (b) of this section and § 1.755–1(b)(5). To the extent a transferee would be required to decrease the adjusted basis of an item of partnership property pursuant to §§ 1.743–1(b)(2) and 1.755–1(b)(5), the decrease first reduces the positive section 743(b) adjustment, if any, that the transferee succeeds to. The following example illustrates the provisions of this paragraph (f)(2):

*Example* —(i) A and B are partners in LTP, a partnership. A owns a 60 percent interest, and B owns a 40 percent interest, in LTP. B owns the LTP interest with an adjusted basis of $50 and a fair market value of $70. LTP owns two assets: Capital Asset 1 with an adjusted basis of $25 and a fair market value of $100, and Capital Asset 2 with an adjusted basis of $100 and a fair market value of $75. B sells its interest in LTP to UTP. Both LTP and UTP have a section 754 election in effect. Pursuant to § 1.755–1(b)(3), UTP's $20 section 743(b) adjustment is allocated $30 to Capital Asset 1 and ($10) to Capital Asset 2.

(ii) UTP distributes its LTP interest to C, a partner in UTP, when the adjusted bases and fair market values of the LTP interest and LTP's assets have not changed. C's adjusted basis in its UTP interest at the time of the distribution is $40. Pursuant to paragraph (f)(2) of this section, C succeeds to UTP's section 743(b) adjustment. Also pursuant to paragraph (f)(2) of this section, the section 743(b) adjustment is taken into account in determining C's share of the adjusted basis of LTP property. Thus, C also has a $30 negative section 743(b) adjustment that must be allocated pursuant to § 1.755–1(b)(5). That is, C's interest in the partnership's previously taxed capital is $70 (C would be entitled to $70 cash on liquidation and there is no increase or decrease for tax gain or tax loss from the hypothetical transaction, taking into account UTP's section 743(b) adjustment to which C succeeds). Pursuant to § 1.755–1(b)(5)(iii)(B), the $30 negative section 743(b) adjustment must be allocated within the capital class first to properties with unrealized depreciation in proportion to C's share of the respective amounts of unrealized depreciation before the decrease. Taking into account UTP's section 743(b) adjustment to which C succeeds, C has no share of LTP's unrealized depreciation. Pursuant to § 1.755–1(b)(5)(iii)(B), any remaining decrease must be allocated among Capital Asset 1 and Capital Asset 2 in proportion to C's share of their adjusted bases. Taking into account UTP's section 743(b) adjustment to which C succeeds, C's share of the adjusted basis in Capital Asset 1 is $40 ($10 share of LTP's basis and $30 of UTP's section 743(b) adjustment to which C succeeded) and in Capital Asset 2 is $30 ($40 share of LTP's basis and ($10) of UTP's section 743(b) adjustment). Thus, 40/70 of the $30 adjustment, $17.14, is allocated to Capital Asset 1 and 30/70 of the $30 adjustment, $12.86, is allocated to Capital Asset 2. The decrease allocated to Capital Asset 1 first reduces UTP's section 743(b) adjustment to which C succeeds. Thus, C has a net section 743(b) adjustment in Capital Asset 1 of $12.86 ($30 minus $17.14) and in Capital Asset 2 of ($22.86) (($10) plus ($12.86)). If Capital Asset 1 is subject to the allowance for depreciation or amortization, C's net $12.86 positive basis adjustment is recovered pursuant to paragraph (j)(4)(i)(B).

(iii) If C later transfers its LTP interest to D in a transaction that is not a substituted basis transaction within the meaning of § 1.755–1(b)(5), under paragraph (f)(1) of this section, D does not succeed to any of C's section 743(b) adjustment.

* * * * *

(j) * * *

(3) * * *

(ii) * * *

*Example 1.* A and B form equal partnership PRS. A and B each contribute $100 cash, and PRS purchases nondepreciable property for $200. Later, at a time when the property value has decreased to $100, C contributes $50 cash for a 1/3 interest in PRS. Under § 1.704–1(b)(2)(iv)(*f*)(*5*), PRS revalues its property in connection with the admission of C, allocating the $100 unrealized loss in the property equally between A and B under the partnership agreement, which provides for the use of the traditional method under § 1.704–3(b). A subsequently sells its interest in PRS to T for $50. PRS has an election in effect under section 754. T receives a negative $50 basis adjustment under section 743(b) that, under section 755, is allocated to the nondepreciable property. PRS later sells the property for $120. PRS recognizes a book gain of $20 (allocated equally between T, B, and C), and a tax loss of $80. T will receive an allocation of $40 of tax loss under the principles of section 704(c). However, because T has a negative $50 basis adjustment in the nondepreciable property, T recognizes a $10 gain from the partnership's sale of the property.

* * * * *

*Example 3.* A and B form equal partnership PRS. A and B each contribute $75 cash. PRS purchases nondepreciable property for $150. Later, at a time when the property value has decreased to $100, C contributes $50 cash for a 1/3 interest in PRS. Under § 1.704–1(b)(2)(iv)(*f*)(*5*), PRS revalues its property in connection with the admission of C. The $50 unrealized loss in the property is allocated equally to A and B under the partnership agreement, which provides for the use of the remedial allocation method described in § 1.704–3(d). A subsequently sells its interest in PRS to T for $50. PRS has an election in effect under section 754. T receives a negative $25 basis adjustment under section 743(b) that, under section 755, is allocated to the nondepreciable property. PRS later sells the property for $112. PRS recognizes a book gain of $12 (allocated equally between T, B, and C), and a tax loss of $38 (allocated equally between T and B). To match its share of book gain, C will be allocated $4 of remedial gain, and T and B will each be allocated an offsetting $2 remedial loss. T was allocated a total of $21 of tax loss with respect to the property. However, because T has a negative $25 basis adjustment in the nondepreciable property, T recognizes a $4 gain from the partnership's sale of the property.

* * * * *

(k) * * *

(1) * * *

(iii) *Rules for substantial built-in loss transactions.* A partnership required to adjust the basis of partnership property following the transfer of an interest in a partnership by sale or exchange or on the death of a partner as the result of the partnership having a substantial built-in loss (as defined in paragraph (a)(2)(i) of this section) immediately after such transfer is subject to, and required to comply with, this paragraph (k)(1), and may rely on, and must comply with, paragraphs (k)(3), (k)(4), and (k)(5) of this section solely with respect to the transfer to which the substantial built-in loss relates as if an election under section 754 were in effect at the time of the transfer. *See* paragraph (k)(2) of this section for additional rules for transferees and paragraph (n) of this section for special reporting rules relating to electing investment partnerships.

(2) * * *

(iv) *Special rules for transferees subject to the substantial built-in loss provisions.* The transferee of an interest in a partnership that is required to reduce the bases of partnership property in accordance with the rules in paragraph (a)(2) of this section must comply with this paragraph (k)(2) as if an election under section 754 were in effect at the time of the transfer.

(l) *Basis adjustments with respect to tiered partnerships*—(1) *General rule.* If an interest in an upper-tier partnership that holds an interest in a lower-tier partnership is transferred by sale or exchange or upon the death of a partner, and the upper-tier partnership and the lower-tier partnership both have elections in effect under section 754, then for purposes of section 743(b) and section 754, an interest in the lower-tier partnership will be deemed similarly transferred in an amount equal to the portion of the upper-tier partnership's interest in the lower-tier partnership that is attributable to the interest in the upper-tier partnership being transferred. Additionally, if an interest in an upper-tier partnership that holds (directly or indirectly through one or more partnerships) an interest in a lower-tier partnership is transferred by sale or exchange or on the death of a partner, and the upper-tier partnership has a substantial built-in loss (within the meaning of paragraph (a)(2)(i) of this section) with respect to the transfer, each lower-tier partnership is treated, solely with respect to the transfer, as if it had made a section 754 election for

the taxable year of the transfer. For additional examples of the application of the principles of this paragraph (l), see Revenue Ruling 87–115, 1987–2 CB 163. *See* § 601.601(d)(2)(ii)(b).

(2) *Example.* The following example illustrates the principles of this paragraph (l).

*Example.* A and B are equal partners in UTP, a partnership. UTP has no liabilities and owns a 25 percent interest in LTP, a partnership. UTP's interest in LTP has a fair market value of $100,000 and an adjusted basis of $500,000. LTP has no liabilities and owns Land, which has a fair market value of $400,000 and an adjusted basis of $2 million. In Year 3, when UTP and LTP do not have section 754 elections in effect, B sells 50 percent of its interest in UTP to C for its fair market value of $25,000. Because the adjusted basis of UTP's interest in LTP ($500,000) exceeds the fair market value of UTP's interest in LTP ($100,000) by more than $250,000 immediately after the transfer, UTP has a substantial built-in loss with respect to the transfer. Thus, pursuant to paragraph (l) of this section, UTP must adjust the basis of its interest in LTP, and LTP must adjust the basis of Land, as if it had made a section 754 election for Year 3.

(m) *Anti-abuse rule for substantial built-in loss transactions.* Provisions relating to substantial built-in loss transactions in paragraph (a) and paragraphs (k), (l), (n), and (o) of this section must be applied in a manner consistent with the purposes of these paragraphs and the substance of the transaction. Accordingly, if a principal purpose of a transaction is to achieve a tax result that is inconsistent with the purpose of one or more of these paragraphs, the Commissioner may recast the transaction for Federal income tax purposes, as appropriate, to achieve tax results that are consistent with the purpose of these paragraphs. Whether a tax result is inconsistent with the purposes of the provisions is determined based on all the facts and circumstances. For example, under the provisions of this paragraph (m)—

(1) Property held by related partnerships may be aggregated if the properties were transferred to the related partnerships with a principal purpose of avoiding the application of the substantial built-in loss provisions in section 743 and the regulations; and

(2) A contribution of property to a partnership may be disregarded if the transfer of the property was made with a principal purpose of avoiding the application of the substantial built-in loss provisions in section 743 and the regulations thereunder.

(n) *Electing investment partnerships*—(1) *No adjustment of partnership basis.* For purposes of this section, an electing investment partnership (as defined in paragraph (n)(6) of this section) shall not be treated as having a substantial built-in loss (within the meaning of paragraph (a)(2)(i) of this section) with respect to any transfer occurring while the election in paragraph (n)(6)(i) of this section is in effect.

(2) *Loss deferral for transferee partner.* In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor partner (or by any prior transferor to the extent not fully offset by a prior disallowance under this paragraph (n)(2)) on the transfer of the partnership interest. If an electing investment partnership allocates losses with a different character from the sale or exchange of property to the transferee (such as ordinary or section 1231 losses and capital losses) and the losses allocated to that partner are limited by this paragraph (n)(2), then a proportionate amount of the losses disallowed under this paragraph (n)(2) shall consist of each loss of a separate character that is allocated to the transferee partner.

(3) *No reduction in partnership basis.* Losses disallowed under paragraph (n)(2) of this section shall not decrease the transferee partner's basis in the partnership interest.

(4) *Effect of termination of partnership.* This paragraph (n) shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

(5) *Certain basis reductions treated as losses.* In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest that is taken into account under paragraph (n)(2) of this section shall be reduced by the amount of such basis reduction.

(6) *Electing investment partnership.* For purposes of this section, the term *electing investment partnership* means any partnership if—

(i) The partnership makes an election under paragraph (n)(10) of this section to have this paragraph (n) apply;

(ii) The partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act;

(iii) The partnership has never been engaged in a trade or business (see paragraph (n)(7) of this section for additional rules regarding this paragraph (n)(6)(iii));

(iv) Substantially all of the assets of the partnership are held for investment;

(v) At least 95 percent of the assets contributed to the partnership consist of money;

(vi) No assets contributed to the partnership had an adjusted basis in excess of fair market value at the time of contribution;

(vii) All partnership interests of the partnership are issued by the partnership pursuant to a private offering before the date that is 24 months after the date of the first capital contribution to the partnership;

(viii) The partnership agreement of the partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest (see paragraphs (n)(8) and (n)(9) of this section for additional rules regarding this paragraph (n)(6)(viii)); and

(ix) The partnership agreement of the partnership provides for a term that is not in excess of 15 years (see paragraph (n)(9) of this section for additional rules regarding this paragraph (n)(6)(ix)).

(7) *Trade or business.* For purposes of paragraph (n)(6)(iii) of this section, whether a partnership is engaged in a trade or business is based on the all the facts and circumstances. Notwithstanding the prior sentence—

(i) A partnership will not be treated as engaged in a trade or business if, based on all the facts and circumstances, the partnership is not engaged in a trade or business under the rules in § 1.731–2(e)(3).

(ii) In the case of a tiered partnership arrangement, a partnership (upper-tier partnership) will not be treated as engaged in a trade or business of a partnership in which it owns an interest (lower-tier partnership) if the upper-tier partnership can establish that, at all times during the period in which the upper-tier partnership owns an interest in the lower-tier partnership, the adjusted basis of its interest in the lower-tier partnership is less than 25 percent of the total capital that is required to be contributed to the upper-tier partnership by its partners during the entire term of the upper-tier partnership. Otherwise, the upper-tier partnership will be treated as engaged in the trade or business of the lower-tier partnership.

(8) *Substantive restrictions.* For purposes of paragraph (n)(6)(viii) of this section, substantive restrictions include cases in which a redemption is permitted under a partnership agreement only if the redemption is

necessary to avoid a violation of state, federal, or local laws (such as ERISA or the Bank Holding Company Act) or the imposition of a federal excise tax on, or a change in the federal tax-exempt status of, a tax-exempt partner.

(9) *Special rules for partnerships in existence on June 4, 2004.* In the case of a partnership in existence on June 4, 2004, paragraph (n)(6)(viii) of this section will not apply to the partnership and paragraph (n)(6)(ix) of this section is applied by substituting ''20 years'' for ''15 years.''

(10) *Election*—(i) *Eligibility.* A partnership is eligible to make the election described in paragraph (n)(6)(i) of this section if the partnership meets the definition of an electing investment partnership in paragraph (n)(6) of this section and does not have an election under section 754 in effect.

(ii) *Manner of making election.* A partnership must make the election by attaching a written statement to an original return for the taxable year for which the election is effective. The original return must be filed not later than the time prescribed by § 1.6031(a)–1(e) of the Procedure and Administration Regulations (including extensions) for filing the return for the taxable year for which the election is effective. If the partnership is not otherwise required to file a partnership return, the election shall be made in accordance with the rules in § 1.6031(a)–1(b)(5) of the Procedure and Administration Regulations. The statement must—

(A) Set forth the name, address, and tax identification number of the partnership making the election;

(B) Contain a representation that the partnership is eligible to make the election; and

(C) Contain a declaration that the partnership elects to be treated as an electing investment partnership.

(iii) *Effect and duration of election.* Once the election is made, the election is effective for all transfers during the partnership's taxable year for which the election is effective and all succeeding taxable years, except as provided in paragraphs (n)(10)(iv) and (n)(10)(v) of this section.

(iv) *Termination of election*—(A) *In general.* The election terminates if the partnership fails to meet the definition of an electing investment partnership. The electing investment partnership's election also terminates if the partnership files an election under section 754.

(B) *Effect of termination.* If the election terminates, the partnership will be subject to the substantial built-in loss provisions in this section with respect to the first transfer of a partnership interest that occurs after the partnership ceases to meet the definition of an electing investment partnership (or the first transfer that occurs after the effective date of the section 754 election) and to each subsequent transfer. In addition, any losses that are subsequently allocated to a partner to whom a partnership interest was transferred while the election was in effect shall remain subject to the rules in paragraph (n)(2) of this section.

(v) *Revocation of election*—(A) *In general.* The election, once made, shall be irrevocable except with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request.

(B) *Effect of revocation.* If the election is properly revoked, the partnership will be subject to the substantial built-in loss provisions in this section with respect to the first transfer of a partnership interest that occurs after the effective date of the revocation and to each subsequent transfer. In addition, any losses that are subsequently allocated to a partner to whom a partnership interest was transferred while the election was in effect shall remain subject to the rules in paragraph (n)(2) of this section.

(11) *Transferor partner required to provide information to transferee partner and partnership*—(i) *In general.* Except as provided in paragraph (n)(11)(ii) of this section, if an electing investment partnership interest is transferred in a sale or exchange or upon the death of a partner, the transferor (or, in the case of a partner who dies, the partner's executor, personal representative, or other successor in interest) must notify the transferee and the partnership in writing. If the transferor is a nominee (within the meaning of § 1.6031(c)–1T), then the nominee, and not the beneficial owner of the transferred interest, must supply the information to the transferee and the partnership. The notice must be provided within 30 days after the date on which the transferor partner (or the executor, personal representative, or other successor in interest) receives a Schedule K–1 from the partnership for the partnership's taxable year in which the transfer occurred. The notice must be signed under penalties of perjury, must be retained by the transferee and the partnership as long as the contents thereof may be material in the administration of any internal revenue law, and must include—

(A) The name, address, and tax identification number of the transferor;

(B) The name, address, and tax identification number of the transferee (if ascertainable);

(C) The name of the electing investment partnership;

(D) The date of the transfer (and, in the case of the death of a partner, the date of the death of the partner);

(E) The amount of loss, if any, recognized by the transferor on the transfer of the interest, together with the computation of the loss;

(F) The amount of losses, if any, recognized by any prior transferors to the extent the losses were subject to disallowance under paragraph (n)(2) of this section in the hands of a prior transferee and have not been offset by prior loss disallowances under paragraph (n)(2) of this section; and

(G) Any other information necessary for the transferee to compute the amount of loss disallowed under paragraph (n)(2) of this section.

(ii) *Exception.* The rules of paragraph (n)(11)(i) of this section do not apply if the transferor recognizes a gain on the transfer and no prior transferor recognized a loss on any transfer.

(iii) *Effect of failure to notify transferee partner.* If the transferor partner, its legal representative in the case of a transfer by death, or the nominee (if the transferor is a nominee) fails to provide the transferee partner with the statement, the transferee partner must treat all losses allocated from the electing investment partnership as disallowed under paragraph (n)(2) of this section unless the transferee partner obtains, from the partnership or otherwise, the information necessary to determine the proper amount of losses disallowed under paragraph (n)(2) of this section. If the transferee does not have the information necessary to determine the proper amount of losses disallowed under paragraph (n)(2) of this section, but does have information sufficient to determine the maximum amount of losses that could be disallowed, then the transferee may treat the amount of losses disallowed under paragraph (n)(2) of this section as being equal to that maximum amount. For example, if the transferee is able to ascertain the adjusted basis that a prior transferor had in its partnership interest, but is not able to ascertain the amount realized by that transferor, the transferee may assume, for purposes of calculating the amount of losses disallowed under paragraph (n)(2) of this section, that the sales price when the prior transferor sold its interest was zero. If, following the filing of a return pursuant to the previous sentence, the transferor partner or the partnership provides the required

information to the transferee partner, the transferee partner should make appropriate adjustments in an amended return for the year of the loss allocation from the partnership in accordance with section 6511 or other applicable rules.

(iv) *Additional rules.* See paragraph (n)(12)(i) of this section for additional reporting requirements when the electing investment partnership is not required to file a partnership return.

(12) *Electing investment partnership required to provide information to partners*—(i) *Distributive shares of partnership items.* An electing investment partnership is required to separately state on Schedule K and K–1 of the partnership's return (Form 1065) all allocations of losses to all of its partners under § 1.702–1(a)(8)(ii), including losses that, in the absence of section 743(e), could be netted against gains at the partnership level. If a partnership's election to be treated as an electing investment partnership is terminated or revoked under paragraphs (n)(10)(iv) or (n)(10)(v) of this section, the partnership must continue to state such gains and losses separately in future returns relating to any period during which the partnership has one or more transferee partners that are subject to section paragraph (n)(2) of this section. If an electing investment partnership is not required to file a partnership return, the transferee of a partnership interest may be required to provide the Commissioner similar information regarding the partner's distributive share of gross gains and losses of the partnership under § 1.6031(a)–1(b)(4).

(ii) *Annual statement.* An electing investment partnership must provide an annual statement to all of its partners. The statement must be attached to every statement provided to a partner or nominee under section 6031(b) that is issued with respect to any taxable year for which an election to be treated as an electing investment partnership is in effect (whether or not the election is in effect for the entire taxable year). The statement must include the following—

(A) A statement that the partnership has elected to be treated as an electing investment partnership;

(B) A statement that, unless the transferor partner recognizes a gain on the transfer and no prior transferor recognized a loss on any transfer, if a partner transfers an interest in the partnership to another person, the transferor partner must, within 30 days after receiving a Schedule K–1 from the partnership for the taxable year that includes the date of the transfer, provide the transferee with certain information, including the amount, if any, of loss that the transferor recognized on the transfer of the partnership interest, and the amount of losses, if any, recognized by prior transferors with respect to the same interest; and

(C) A statement that if an interest in the partnership is transferred to a transferee partner, the transferee is required to reduce its distributive share of losses from the partnership, determined without regard to gains from the partnership, to the extent of any losses recognized by the transferor partner when that partner transferred the partnership interest to the transferee (and to the extent of other losses recognized on prior transfers of the same partnership interest that have not been offset by prior loss disallowances). The statement must also notify the transferee that it is required to reduce its share of losses as reported to the transferee by the partnership each year by the amount of any loss recognized by the transferor partner (or any prior transferor to the extent not already offset by prior loss disallowances) until the transferee has reduced its share of partnership losses by the total amount of losses required to be disallowed. Finally, the statement must state that if the transferor partner (or its nominee), or its legal representative in the case of a transfer by death, fails to provide the transferee with the required statement, the transferee must treat all losses allocated from the partnership as disallowed unless the transferee obtains, from the partnership or otherwise, the information necessary to determine the proper amount of losses disallowed.

(o) *Securitization partnerships*—(1) *General rule.* A securitization partnership (as defined in paragraph (o)(2) of this section) shall not be treated as having a substantial built-in loss with respect to any transfer.

(2) *Definition of securitization partnership.* A *securitization partnership* means any partnership the sole business activity of which is to issue securities that provide for a fixed principal (or similar) amount and that are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired for the purpose of being disposed of.

(p) *Effective/applicability date.* * * * Paragraph (f)(2) of this section and the provisions relating to substantial built-in losses in paragraph (a) and paragraphs (k), (l), (m), (n), and (o) of this section are effective for transfers of partnership interests occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 9.** Section 1.755–1 is amended by:

■ 1. Revising paragraph (b)(5).

■ 2. Redesignating paragraph (e) as paragraph (f).

■ 3. Adding a new paragraph (e).

■ 4. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

**§ 1.755–1 Rules for allocation of basis.**

* * * * *

(b) * * *

* * * * *

(5) *Substituted basis transactions*—(i) *In general.* This paragraph (b)(5) applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in that interest and from exchanges in which the transferee's basis in the partnership interest is determined by reference to other property held at any time by the transferee. For example, this paragraph (b)(5) applies if a partnership interest is contributed to a corporation in a transaction to which section 351 applies, if a partnership interest is contributed to a partnership in a transaction to which section 721(a) applies, or if a partnership interest is distributed by a partnership in a transaction to which section 731(a) applies.

(ii) *Allocations between classes of property*—(A) *No adjustment.* If the total amount of the basis adjustment under section 743(b) is zero, then no adjustment to the basis of partnership property will be made under this paragraph (b)(5).

(B) *Increases.* If there is an increase in basis to be allocated to partnership assets, the increase must be allocated between capital gain property and ordinary income property in proportion to, and to the extent of, the gross gain or gross income (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all property in each class. Any remaining increase must be allocated between the classes in proportion to the fair market value of all property in each class.

(C) *Decreases.* If there is a decrease in basis to be allocated to partnership assets, the decrease must be allocated

between capital gain property and ordinary income property in proportion to, and to the extent of, the gross loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to the transferee (to the extent attributable to the acquired partnership interest) from the hypothetical sale of all property in each class. Any remaining decrease must be allocated between the classes in proportion to the transferee's shares of the adjusted bases of all property in each class (as adjusted under the preceding sentence).

(iii) *Allocations within the classes*—(A) *Increases.* If, under paragraph (b)(5)(ii) of this section, there is an increase in basis to be allocated within a class, the increase must be allocated first to properties with unrealized appreciation in proportion to the transferee's share of the respective amounts of unrealized appreciation (to the extent attributable to the acquired partnership interest) before the increase (but only to the extent of the transferee's share of each property's unrealized appreciation). Any remaining increase must be allocated among the properties within the class in proportion to their fair market values.

(B) *Decreases.* If, under paragraph (b)(5)(ii) of this section, there is a decrease in basis to be allocated within a class, the decrease must be allocated first to properties with unrealized depreciation in proportion to the transferee's shares of the respective amounts of unrealized depreciation (to the extent attributable to the acquired partnership interest) before the decrease (but only to the extent of the transferee's share of each property's unrealized depreciation). Any remaining decrease must be allocated among the properties within the class in proportion to the transferee's shares of their adjusted bases (as adjusted under the preceding sentence).

(C) *Limitation in decrease of basis.* Where, as a result of a transaction to which this paragraph (b)(5) applies, a decrease in basis must be allocated to capital gain assets, ordinary income assets, or both, and the amount of the decrease otherwise allocable to a particular class exceeds the transferee's share of the adjusted basis to the partnership of all assets in that class, the basis of the property is reduced to zero (but not below zero).

(D) *Carryover adjustment.* Where a transferee's negative basis adjustment under section 743(b) cannot be allocated to any asset, the adjustment is made when the partnership subsequently acquires property of a like character to which an adjustment can be made.

(iv) *Examples.* The provisions of this paragraph (b)(5) are illustrated by the following examples—

*Example 1.* * * *

*Example 2.* * * *

*Example 3* —(i) A is a one-third partner in UTP, a partnership, which has a valid election in effect under section 754. The three partners in UTP have equal interests in the capital and profits of UTP. UTP has three assets with the following adjusted bases and fair market values:

| Assets | Adjusted basis | Fair market value |
|---|---|---|
| Intangible 1 | $30 | $200 |
| Land ..... | 200 | 200 |
| 50% interest in LTP ..... | 190 | 200 |

LTP, a partnership, has a section 754 election in effect for the year of the distribution. LTP owns three assets with the following adjusted bases and fair market values:

| Assets | Adjusted basis | Fair market value |
|---|---|---|
| Intangible 2 | $340 | $100 |
| Intangible 3 | 20 | 280 |
| Inventory .. | 20 | 20 |

UTP distributes its interest in LTP in redemption of A's interest in UTP. At the time of the distribution, A's adjusted basis in its UTP interest is $140. A recognizes no gain or loss on the distribution. Under section 732(b), A's basis in the distributed LTP interest is $140. Under sections 734(b) and 755, UTP increases its adjusted basis in Intangible 1 by $50, the amount of the basis adjustment to the LTP interest in the hands of A.

(ii) The amount of the basis adjustment with respect to LTP under section 743(b) is the difference between A's basis in LTP of $140 and A's share of the adjusted basis to LTP of partnership property. A's share of the adjusted basis to LTP of partnership property is equal to the sum of A's share of LTP's liabilities of $0 plus A's interest in the previously taxed capital of LTP of $190 ($200, A's cash on liquidation, increased by $120, the amount of tax loss allocated to A from the sale of Intangible 2 in the hypothetical transaction, decreased by $130, the amount of tax gain allocated to A from the sale of Intangible 3 in the hypothetical transaction). Therefore, the amount of the negative basis adjustment under section 743(b) to partnership property is $50.

(iii) Under this paragraph (b)(5), LTP must allocate $50 of A's negative basis adjustment between capital gain property and ordinary income property in proportion to, and to the extent of, the gross loss (including any remedial allocations under § 1.704–3(d)) that would be allocated to A from the hypothetical sale of all property in each class. If LTP disposed of its assets in a hypothetical sale, A would be allocated $120 of gross loss from Intangible 2 only. Accordingly, the $50 negative adjustment must be allocated to capital assets. Under paragraph (b)(5)(iii)(B) of this section, the $50 negative adjustment must be allocated to the assets in the capital class first to properties with unrealized depreciation in proportion to the transferee's shares of the respective amounts of unrealized depreciation. Thus, the $50 negative adjustment must be allocated entirely to Intangible 2.

*Example 4* —(i) A is a one-third partner in LTP, a partnership that has made an election under section 754. The three partners in LTP have equal interests in the capital and profits of LTP. LTP has two assets: accounts receivable with an adjusted basis of $300 and a fair market value of $240 and a nondepreciable capital asset with an adjusted basis of $60 and a fair market value of $240. A contributes its interest in LTP to UTP in a transaction described in section 721. At the time of the transfer, A's basis in its LTP interest is $150. Under section 723, UTP's basis in its interest in LTP is $150.

(ii) The amount of the basis adjustment under section 743(b) is the difference between UTP's $150 basis in its LTP interest and UTP's share of the adjusted basis to LTP of LTP's property. UTP's share of the adjusted basis to LTP of LTP's property is equal to the sum of UTP's share of LTP's liabilities of $0 plus UTP's interest in the previously taxed capital of LTP of $120 ($160, the amount of cash on liquidation, increased by $20, the amount of tax loss allocated to UTP from the hypothetical transaction, and decreased by $60, the amount of tax gain allocated to UTP from the hypothetical transaction). Therefore, the amount of the negative basis adjustment under section 743(b) to partnership property is $30.

(iii) The total amount of gross loss that would be allocated to UTP from the hypothetical sale of LTP's ordinary income property is $20 (one third of the excess of the basis of the accounts receivable ($300) over their fair market value ($240)). The hypothetical sale of LTP's capital gain property would result in a net gain. Therefore, under this paragraph (b)(5), $20 of the $30 basis adjustment must be allocated to ordinary income property. Because LTP holds only one ordinary income property, the $20 decrease must be allocated entirely to the accounts receivable. Pursuant to paragraph (b)(5)(ii)(C) of this section, the remaining $10 basis adjustment must be allocated between ordinary income property and capital gain property according to UTP's share of the adjusted bases of such properties. Therefore, $8 ($10 multiplied by $80 divided by $100) would be allocated to the accounts receivable and $2 ($10 multiplied by $20 divided by $100) would be allocated to the nondepreciable capital asset. * * *

* * * * *

(e) *No allocation of basis decrease to stock of corporate partner*—(1) *In general.* In making an allocation under section 755(a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(A) No allocation may be made to stock in a corporation (or any person related (within the meaning of sections

267(b) or 707(b)(1)) to such corporation) that is a partner in the partnership; and

(B) Any amount not allocable to stock by reason of paragraph (c)(1) of this section shall be allocated under section 755(a) to other partnership property.

(2) *Recognition of gain.* Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (e)(1)(B) of this section to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (e)(1)(B) of this section.

*(3) Example.* A, B, and C are equal partners in PRS, a partnership. C is a corporation. The adjusted basis and fair market value for each of their interests in PRS are $100. PRS owns Capital Asset 1 with an adjusted basis of $0 and a fair market value of $100, Capital Asset 2 with an adjusted basis of $150 and a fair market value of $50, and stock in Corp, a corporation that is related to C under section 267(b), with an adjusted basis and fair market value of $150. PRS has a section 754 election in effect. PRS distributes Capital Asset 1 to A in liquidation of A's interest in PRS. PRS will reduce the basis of its remaining assets under section 734(b) by $100, to be allocated under section 755. The entire adjustment is allocated to Capital Asset 2, reducing its basis by $100 to $50. Pursuant to the general rule of paragraph (c) of this section, PRS would reduce the basis of Capital Asset 2 by $50 and the stock of Corp by $50. However, Pursuant to paragraph (e)(1)(A) of this section, the basis of the Corp stock is not adjusted. Thus, the basis of Capital Asset 2 is reduced by $100 from $150 to $50.

(f) *Effective date*—(1) *Generally.* Except as provided in paragraph (f)(2) of this section, this section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after December 15, 1999.

(2) *Special rules.* Paragraphs (a) and (b)(3)(iii) of this section apply to transfers of partnership interests and distributions of property from a partnership that occur on or after June 9, 2003. Paragraph (b)(5) of this section applies to transfers of partnership interests occurring on or after January 16, 2014. Paragraph (e) of this section applies to transfers of partnership interests occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

**§ 1.1502–13 [Amended]**

■ **Par. 10.** Section 1.1502–13 is amended by:

■ 1. Amending paragraph (h)(2), *Example 4,* by removing ''Five years'' and adding in its place ''Seven years''.

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

[FR Doc. 2014–00649 Filed 1–15–14; 8:45 am]

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